

Chapter 11 Guidelines

The following guidelines are provided to facilitate presentation and requests for cash collateral and financing orders for Chapter 11 proceedings. These guidelines supplement the Federal and Local Rules of this District. In the event of conflict, the Federal Rules of Bankruptcy Procedure shall control.

Cash Collateral and Financing Orders

- (1) Financing Motions. Except as provided herein and/or in the Local Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 (“Financing Motions”).
 - (a) Certain Provisions to be Identified. All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement, and (c) justify the inclusion of such provision:
 - (i) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);
 - (ii) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor’s prepetition lien or the release or waiver of claims against the secured creditor without first giving parties in interest at least sixty (60) days from the entry of the final order and the creditors’ committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;
 - (iii) Provisions that seek to waive any rights the estate may have under 11 U.S.C. § 506(c);
 - (iv) Provisions that immediately grant to the prepetition secured creditor liens or super priority administrative claims on the

debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;

- (v) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);
 - (vi) Provisions that provide disparate or different treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out.
 - (vii) Provisions that prime any secured lien without the consent of that lienor; and
 - (viii) Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1).
 - (ix) Provisions that grant the secured lender expedited relief from the automatic stay under 11 U.S.C. § 362, or relief from the automatic stay without further order of Court.
 - (x) Provisions that grant the secured lender the right to credit bid pursuant to 11 U.S.C. § 363(k)
- (b) All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364), and shall specify any applicable "benchmarks" (e.g., delivery of financial information, business plan, commencement of litigation, filing of plan of reorganization, approval of disclosure statement, confirmation of plan of reorganization, etc.).
- (2) Interim Relief. When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief pending review by interested parties of the proposed Debtor-in-Possession financing arrangements. Such interim relief shall be only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court shall not approve interim

financing orders that include any of the provisions identified in paragraphs 1(a)(i)(A)-(J) supra.

- (3) Final Orders. A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001. Ordinarily, the final hearing shall be held at least seven (7) days following the organizational meeting of the creditors' committee contemplated by 11 U.S.C. § 1102.