

Rule 4001-2 Cash Collateral and Financing Orders.

- (a) Motions. A motion to approve use of cash collateral under section 363 of the Code or postpetition financing under section 364 of the Code must meet the following requirements:
- (i) Form of Motion. The motion must: (A) provide a summary of the essential terms of the proposed use of cash collateral or financing, and identify where those terms appear in the proposed form of order, cash collateral stipulation or loan agreement; (B) identify whether and where provisions of the type listed below appear in the proposed form of order, cash collateral stipulation, or loan agreement; and (C) for provisions implicating subsections N through X below, explain why each provision is justified under the circumstances:
- (A) The interim and final amounts of (1) cash collateral the debtor seeks permission to use and (2) credit the debtor seeks to obtain under the financing, including the committed amount of the financing and the amount of new money actually available to the debtor;
 - (B) Pricing and other economic terms, including, for example, letter of credit fees, commitment fees, unused line fees, exit fees, work fees, and any other fees. If the debtor seeks to file any terms under seal, then the terms should be omitted from the motion and instead disclosed in a separate document filed under seal consistent with Local Rule 9018-1, and the motion should state that the fees are disclosed in the separate document that is being filed under seal;
 - (C) Any provision that specifically limits the court's power or discretion to enter future orders in the case;
 - (D) Any provision authorizing use of cash collateral or loan proceeds to fund nondebtor affiliates, and the approximate amount of the funding;
 - (E) Material conditions to closing and borrowing, including budget provisions;
 - (F) Any carve-outs from liens or superpriority claims, including the material terms of any professional fee carve-out;
 - (G) Any provision that provides for postpetition liens on unencumbered assets, including the identification of the assets;
 - (H) Any provision that establishes sale or plan milestones;
 - (I) Any prepayment penalty or other provision that impacts the debtor's right, cost, or ability to repay the financing in full during the course of the chapter 11 case;

- (J) In jointly administered cases, any provision that governs joint liability of the debtors, including any provision that causes one debtor to become liable for the prepetition obligations of another;
- (K) Any provision that requires the debtor to pay a secured party's expenses and attorneys' fees in connection with the use of cash collateral or financing, without notice or review by the U.S. Trustee, any official committee or, upon objection, the Court;
- (L) Any provision that prohibits the use of estate funds to investigate the liens and claims of the prepetition lender;
- (M) Any termination or default provisions concerning the use of cash collateral or the availability of credit;
- (N) Any provision that grants cross-collateralization, elevates prepetition debt to administrative expense or higher priority status, or secures prepetition debt with liens on postpetition assets;
- (O) Any provision that applies the proceeds of the financing to pay, in whole or in part, prepetition debt, or otherwise has the effect of converting or "rolling up" prepetition debt into postpetition debt;
- (P) Provisions that immediately prime valid, perfected, and unavoidable prepetition liens or liens perfected under section 546(b) of the Code, if the liens being primed are senior to the lender's prepetition liens, unless the affected secured creditor has affirmatively consented to the priming. If the provision provides for priming only after a subsequent hearing on notice, then the motion must describe the notice to be provided to affected secured creditors;
- (Q) Provisions or findings of fact that (i) bind the estate or other parties in interest as to the validity, perfection, or amount of a prepetition claim or lien or that waive claims against a prepetition creditor without first giving parties in interest, including any official committee, at least 75 days from the entry of the first interim order to commence a challenge or (ii) limit the Court's ability to grant relief upon a successful challenge;
- (R) Provisions that immediately approve all terms and conditions of an underlying loan agreement, except for provisions that merely provide the debtor is authorized to enter into and be bound by the terms and conditions of the loan agreement;
- (S) Provisions that modify or terminate the automatic stay or permit the lender to enforce remedies following an event of default that do not require at least 5 days' written notice to the debtor or trustee, the U.S. Trustee, and any official committee before effective;

- (T) Provisions that seek to limit what parties in interest other than the debtor may raise at any emergency hearing scheduled during the period set forth in subsection (S) above;
 - (U) Provisions that immediately grant the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, and 548 of the Code or their proceeds;
 - (V) Provisions that immediately waive the debtor's rights under section 506(c) of the Code;
 - (W) Provisions that immediately seek to affect the Court's power to consider the equities of the case doctrine under section 552(b)(1) of the Code; and
 - (X) Provisions that immediately shield the lender from the equitable doctrine of "marshalling" or any similar doctrine.
- (ii) Operative Documents and Defined Terms. The motion must attach any cash collateral stipulation, postpetition loan agreement, or other document that provides material terms of the debtor's use of cash collateral or postpetition financing. Defined terms used in the motion must be defined in the motion or by reference to the specific location where the term is defined in the attached documents.
 - (iii) Budget. If the debtor's use of cash collateral or access to credit is subject to a budget, then (A) the budget must be attached to the motion, (B) the motion must state whether the debtor believes the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing and the budget, and (C) the budget must detail the sources and uses of cash needed for ongoing operations on a weekly basis during the budget period.
- (b) Limitations on Interim Relief. Interim relief under the motion is limited to what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Absent extraordinary circumstances, the Court will not approve an interim order that includes the provisions identified in Local Rule 4001-2(a)(i)(P)-(X).
 - (c) Final Orders. A final order may be entered only after notice and a hearing under Fed. R. Bankr. P. 4001 and Local Rule 2002-1(b). The final hearing ordinarily will be held at least 7 days after the organizational meeting for an official committee of unsecured creditors.