

**Rule 4001-2      Cash Collateral and Financing Orders.**

- (a) Motions. Except as provided herein and elsewhere in these Local Rules, all cash collateral and financing requests under sections 363 and 364 of the Bankruptcy Code shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 ("Financing Motions").
- (i) Form of Financing Motion. All Financing Motions shall (A) provide a summary of the essential terms of the proposed use of cash collateral and/or financing, and identify the location of the same in the proposed form of order, cash collateral stipulation and/or loan agreement; (B) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, and if so, identify the location of the same in the proposed form of order, cash collateral stipulation and/or loan agreement; and (C) with respect to subsections N through X below, also set forth the justification for the inclusion of any such provision:
- (A) The amount of cash collateral the debtor seeks permission to use or the amount of credit the debtor seeks to obtain under the proposed loan agreement, including the committed amount of the proposed loan agreement and the amount of new funding that will actually be available for borrowing by the debtor;
- (B) Pricing and economic terms, including letter of credit fees, commitment fees, and any other fees, provided that when any such terms are sought to be filed under seal, they shall not be disclosed in the Financing Motion itself, but shall be set forth in a separate document filed pursuant to the procedures set forth in Local Rule 9018-1(d), the filing of which shall be disclosed in the Financing Motion;
- (C) Any provision that specifically limits the Court's power or discretion to enter future orders in the case;
- (D) Any provision that provides for the funding of non-debtor affiliates with cash collateral or

- proceeds of the loan, as applicable, and the approximate amount of such 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 such assets;
  - (H) Any provision that establishes sale or plan milestones;
  - (I) Any prepayment penalty or other provision that affects the debtor's right 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 would cause one jointly administered debtor to become liable for the prepetition debt of another jointly administered debtor for which it was not previously subject to;
  - (K) Any provision that requires the debtor to pay an agent's or lender's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee appointed under section 1102 of the Bankruptcy Code (if formed) or, upon objection by either of the foregoing parties, 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 protection or elevates prepetition debt to administrative expense (or higher) status or that secures prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law);
- (O) 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 (or "rolling up") prepetition debt to postpetition debt;
- (P) Provisions that immediately prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior to the lender's prepetition liens under applicable law, without the consent of the affected secured creditors, and the proposed notice to be provided to such affected secured creditors;
- (Q) Provisions or findings of fact that (i) 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 waiver of claims against the secured creditor without first giving parties in interest, including, but not limited to, any official committee appointed in these cases, at least seventy-five (75) days from the entry of the initial interim order to investigate such matters or (ii) limit the Court's ability to grant relief in the event of a successful challenge;
- (R) Provisions that immediately approve all terms and conditions of the underlying loan agreement (provided that provisions in the order that provide that the debtor is authorized to enter into and be bound by the terms and conditions of such loan agreement do not need to be summarized);

- (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 five (5) days' written notice to the trustee or debtor in possession, the Office of the United States Trustee and each committee appointed under sections 1102 and 1114 of the Bankruptcy Code (the "Remedies Notice Period"), prior to such modification or termination of the automatic stay or the enforcement of the lender's remedies;
  - (T) Provisions that seek to limit what parties in interest (other than the debtor) may raise at any emergency hearing scheduled during the Remedies Notice Period;
  - (U) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, and 548 of the Bankruptcy Code or, in each case, the proceeds thereof;
  - (V) Provisions that immediately waive the debtor's rights under section 506(c) of the Bankruptcy 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 Bankruptcy Code; and
  - (X) Provisions that immediately shield the lender from the equitable doctrine of "marshalling" or any similar doctrine.
- (ii) Financing Terms. Defined terms in Financing Motions must either be defined in the Financing Motion, or the Financing Motion shall include a specific reference to where such terms are defined in the applicable loan agreements. The Financing Motion shall attach the postpetition loan agreements or other documents that set forth the terms of the financing. If the postpetition financing incorporates terms from any prepetition financing documents, those terms must either be set forth in their entirety in the Financing Motion, or the

Financing Motion must include a specific reference to where such terms can be found in the applicable prepetition financing document, in which instance such document must be attached to the Financing Motion.

- (iii) Budget. If the debtor will be subject to a budget pursuant to the Financing Motion, (i) the applicable budget shall be attached as an exhibit to the Financing Motion, (ii) the Financing Motion shall include a statement by the debtor as to whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget and (iii) the budget shall show in reasonably sufficient detail the sources and uses of cash necessary for ongoing operations on a weekly basis during the budget period.

(b) Interim Relief Availability and Limitations.

- (i) Interim Relief Available. 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.
- (ii) Interim Relief Limitations. Interim relief granted hereunder 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 previously identified in Local Rule 4001-2(a)(i)(P) through 4001-2(a)(i)(X).

- (c) Final Orders. A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001 and Local Rule 2002-1(b). 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.

**Rule 4001-3**     **Investment in Money Market Funds.**   There is "cause" for relief from the requirements of 11 U.S.C. § 345(b) where money of the estate is invested in an open-end management investment company, registered under the Investment Company Act of 1940, that is regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of 1940; so long as the debtor has filed with the Court (i) a statement identifying the fund; and (ii) the fund's certification, which shall be accompanied by its currently effective prospectus as filed with the Securities and Exchange Commission, that the fund:

- (a)   Invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements;
- (b)   Has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's;
- (c)   Has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange; and
- (d)   Has adopted a policy that it will notify its shareholders sixty (60) days prior to any change in its investment or redemption policies under (a) and (c) above.