

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**
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GUIDELINES FOR PREPACKAGED CHAPTER 11 CASES

1. GOALS.

The purpose of this guideline is to establish a uniform approach for commencing and administering “prepackaged chapter 11 cases” in the United States Bankruptcy Court for the Southern District of Florida under Local Rule 3017-3. This guideline defines what a “prepackaged chapter 11 case” is and attempts to assist practitioners with procedures that are not completely or specifically addressed by statute or rules. Although each case is different, many issues are common to all prepackaged cases. Judicial economy, as well as procedural predictability for debtors and creditors, will be enhanced by promulgation of the following guidelines to deal with these common issues. The guidelines are advisory only; the court retains the authority to depart from them at any time.

2. DEFINITION OF PREPACKAGED CHAPTER 11 CASE.

For purpose of these guidelines, a “prepackaged chapter 11 case” is one in which the debtor negotiates terms of a plan, and solicits acceptances thereof, prior to filing the chapter 11 petition. In these circumstances, the debtor shall file a motion requesting the court to schedule a preliminary status conference and subsequent confirmation hearing for the prepackaged plan (the “Prepackaged Scheduling Motion”) as set forth below.

3. CRITERIA FOR PREPACKAGED CHAPTER 11 CASE; CONTENTS OF PREPACKAGED SCHEDULING MOTION.

A. Content of Prepackaged Scheduling Motion. The Prepackaged Scheduling Motion shall:

- (1) (a) represent that the solicitation of votes to accept or reject the debtor’s plan required for confirmation of that plan was completed prior to commencement of the case, and that no additional solicitation of votes on that plan is contemplated by the debtor, or (b) seek a determination that the solicitation of all votes to accept or reject the debtor’s plan required for confirmation of that plan has been deemed adequate by the court pursuant to paragraph 3.C.(2) below such that no additional solicitation will be required;
- (2) represent that the requisite acceptances of such plan have been obtained from each class of claims or interests as to which solicitation is required, except as provided in paragraph 3.A.(3) below;

- (3) with respect to any class of interests that has not accepted the plan, whether or not it is deemed not to have accepted the plan under 11 U.S.C. §1126(g), represent that the debtor is requesting confirmation under 11 U.S.C. §1129(b);
 - (4) request entry of an Order scheduling an expedited preliminary hearing and status conference pursuant to 11 U.S.C. §105(d). The Debtor may request a hearing within two business days of the commencement of the case if the motion sets forth cause for scheduling the hearing on short notice and the motion is served, as applicable, pursuant to Local Rules 2002-1(H) or 9073-1(B), for the court to hear any motions pursuant to which the debtor seeks entry of orders on or shortly after the filing of the petition (“First Day Motions”) and set the hearing contemplated by paragraph 3.A.(5) below. If the motion requests a hearing within two business days and the judge assigned to the case is unable to conduct the preliminary hearing and status conference within two business days of the commencement of the case, the judge assigned to the case will schedule the hearing as soon as feasibly possible;
 - (5) request entry of an order scheduling the hearing (a) on confirmation of the plan and (b) to determine whether the debtor has satisfied the requirements of either 11 U.S.C. §1126(b)(1) or 11 U.S.C. §1126(b)(2), for a date that is not more than ninety (90) days following the petition date; and
 - (6) be supported by the Report and Affidavit required by Local Rule 3020-1(B) and have attached (a) a copy of the form of Ballot utilized for acceptance or rejection of the debtor’s plan; and (b) copies of all solicitation materials used to solicit those votes.
- B. Confirmation Pursuant to 11 U.S.C. §1129(b)(2)(C). A chapter 11 case may constitute a “prepackaged chapter 11 case” for purposes of these guidelines notwithstanding the fact that the debtor proposes to confirm the plan pursuant to 11 U.S.C. §1129(b)(2)(C) as to a class of interests.
- C. Filing of Petition After Solicitation has Commenced but Before Expiration of Voting Deadline. Unless the court orders otherwise, if a chapter 11 case is commenced by or against the debtor, or if a chapter 7 case is commenced against the debtor and converted to a chapter 11 case by the debtor pursuant to 11 U.S.C. §706(a), after the debtor has transmitted all solicitation materials to holders of claims and interests whose vote is sought, but before the deadline for casting acceptances or rejections of the debtor’s plan (the “Voting Deadline”),
- (1) the debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline; and

- (2) after further notice and a hearing the court shall determine the effect of any and all such votes.

D. Applicability of Guidelines to Cases Involving Cramdown of Classes of Claims and “Partial Prepackaged Chapter 11 Cases.” The debtor or other party in interest, either as set forth in the scheduling motion or on separate notice and hearing, may request that the court, in an appropriate case, apply some or all of these guidelines to,

- (1) cases in which the debtor has satisfied the requirements of paragraph 3.A.(1) above but intends to seek confirmation of the plan pursuant to 11 U.S.C. §1129(b) as to a class of claims (a) which is deemed not to have accepted the plan under 11 U.S.C. §1126(g); (b) which is receiving or retaining property under or pursuant to the plan but whose members’ votes were not solicited prepetition and whose rejection of the plan has been assumed by the debtor for purposes of confirming the plan; or (c) which is receiving or retaining property under or pursuant to the plan and which voted prepetition to reject the plan, as long as no class junior to such rejecting class is receiving or retaining any property under or pursuant to the plan; and
- (2) “Partial Prepackaged Chapter 11 Cases” – i.e.; cases in which acceptances of the debtor’s plan were solicited prior to the commencement of the case from some, but not all, classes of claims or interests whose solicitation is required to confirm the debtor’s plan.

4. FILING OR PREPACKAGED CHAPTER 11 CASE.

As soon as practicable following filing of a prepackaged chapter 11 case, the debtor shall furnish to the judge assigned to the case a copy of the plan, the disclosure statement (or other solicitation materials), the Reports and Affidavits of balloting as required by Local Bankruptcy Rule 3020(B), the First Day Motions, and any other filed motion.