Committee, and Judicial Conference approval of future amendments to the Official Forms conforming to adjusted dollar amounts -- the Advisory Committee recommends that the Standing Committee and the Judicial Conference, which prescribes the Official Forms, adopt an appropriate resolution that will result in the automatic amendment of the Official Forms to conform to future dollar adjustments under § 104 of the Code.

B. Proposed Suggested Interim Bankruptcy Rules presented to the Standing Committee with a request for approval and authorization to distribute to district and bankruptcy courts.

1. Background. In 1979, the Advisory Committee on Bankruptcy Rules formulated Suggested Interim Bankruptcy Rules and Forms for adoption as local court rules pending the promulgation of a new body of national Bankruptcy Rules and Official Forms to implement the new Bankruptcy Code (Title I of the Bankruptcy Reform Act of 1978). The interim rules served as model local rules until the new Rules and Forms became effective in 1983.

In 1987, the Advisory Committee again formulated Suggested Interim Bankruptcy Rules and Forms for adoption by local courts. The 1987 interim rules and forms were designed to implement Chapter 12 of the Code (Family Farmers) that was enacted as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. These interim rules -- which were sent to district and bankruptcy courts with an explanatory cover letter signed by the chairman of the Advisory Committee -- served as model chapter 12 rules until the national Bankruptcy Rules and Forms were amended in 1991.

At its December 1994 meeting, the Advisory Committee approved three Suggested Interim Bankruptcy Rules and recommended that they be sent to district and bankruptcy courts to serve as model rules designed to implement three aspects of the Bankruptcy Reform Act of 1994 (the election of chapter 11 trustees, small business chapter 11 cases, and jury trials). National rules governing these matters will not become effective until at least December 1997 in accordance with the usual Rules Enabling Act process.

2. Synopsis of Suggested Interim Bankruptcy Rules

a. Suggested Interim Rule 1 provides procedures for the election of a chapter 11 trustee. Before enactment of the Reform Act, creditors did not have the right to elect a trustee in a chapter 11 case. If the court ordered the appointment of a trustee, the United States trustee, in consultation with parties in interest, selected the person to be appointed. The Reform Act continues the same means of selecting a trustee, but also provides that, on request of a party in interest made within 30 days after the court orders the appointment of a trustee, the United States trustee shall convene a meeting of creditors for the purpose of electing a chapter 11 trustee. The Suggested Interim Rule provides procedures for requesting that the United States trustee convene a meeting to elect a trustee, as well as for giving notice of, and conducting, the election. It also governs the procedure for court approval of the appointment of the elected person.

b. Suggested Interim Rule 2 provides procedures to implement some of the Reform Act's provisions relating to small businesses in chapter 11 cases. The Reform Act provides that a "small business" (as defined in a new definition added to the Code) may elect to be considered a small business. If such an election is made, the debtor may solicit votes on a chapter 11 plan with a "conditionally approved" disclosure statement, subject to final approval of the disclosure statement at a hearing that may be combined with the hearing on confirmation. This Suggested Interim Rule provides procedures, including time limits, for making a small business election. It also provides procedures relating to conditional approval of the disclosure statement.

c. Suggested Interim Rule 3 provides procedures relating to jury trials. The Reform Act amended 28 USC § 157 to provide that a bankruptcy judge may conduct a jury trial if a party has a right to trial by jury, the district court designates the bankruptcy judge to conduct a jury trial, and the parties consent. Former Bankruptcy Rule 9015

governing jury trials was abrogated in 1987 because of the existing uncertainty regarding the right to jury trials in bankruptcy cases. Rules are needed governing all aspects of jury trials, including procedures for demanding trial by jury in the district court or the bankruptcy court, and for consenting to have the bankruptcy judge conduct the trial. This Suggested Interim Rule incorporates by reference several Civil Rules relating to jury trials, and also provides procedures relating to consent.

3. Text of Suggested Interim Bankruptcy Rules:

SUGGESTED INTERIM BANKRUPTCY RULES

Rule 1. Election of Trustee in a Chapter 11 Reorganization Case

(a) REQUEST FOR AN ELECTION. A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Bankruptcy Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, a person appointed trustee under § 1104(d) shall serve as trustee.

(b) MANNER OF ELECTION AND NOTICE. An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Bankruptcy Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under Bankruptcy Rule 2002(a). A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any

other party entitled to solicit a proxy under Bankruptcy Rule 2006.

(c) APPLICATION FOR APPROVAL OF APPOINTMENT AND RESOLUTION OF DISPUTES. If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the court, the United States trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under Bankruptcy Rule 2007.1(b), except that the application does not have to contain names of parties in interest with whom the United States trustee has consulted. If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after the date of the creditors' meeting called under § 1104(b), a person appointed by the United States trustee in accordance with § 1104(d) of the Code and approved in accordance with Bankruptcy Rule 2007.1(b) shall serve as trustee.

NOTE

This rule implements the amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case. The requirement that creditors receive at least 20-days' notice of the meeting may be reduced to a shorter period under Bankruptcy Rule 9006(c)(1).

The procedures for reporting disputes to the court and the time limit for filing a motion to resolve any disputes derive from Bankruptcy Rule 2003(d). Because

the person elected must be "disinterested," the United States trustee must file an application for court approval of the elected person in accordance with Bankruptcy Rule 2007.1(b).

Rule 2. Small Business Chapter 11 Reorganization Cases

(a) ELECTION TO BE CONSIDERED A SMALL BUSINESS IN A CHAPTER 11 REORGANIZATION CASE. In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the court, for cause, may fix.

(b) APPROVAL OF DISCLOSURE STATEMENT.

(1) Conditional Approval. If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Bankruptcy Rule 3016. On or before conditional approval of the disclosure statement, the court shall

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a time for filing objections to the disclosure statement;

(c) fix a date for the hearing on final

approval of the disclosure statement to be held if a timely objection is filed; and (d) fix a date for the hearing on confirmation.

(2) Application of Bankruptcy Rule 3017. If the disclosure statement is conditionally approved, Bankruptcy Rule 3017(a), (b), (c), and (e) do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying Bankruptcy Rule 3017(d).

(3) Objections and Hearing on Final Approval. Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Bankruptcy Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of

the plan.

NOTE

This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994.

If the debtor is a small business and has elected under § 1121(e) to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

Rule 3. Jury Trials

(a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Bankruptcy Rule 5005.

(b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed under Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 USC § 157(e) by jointly or separately filing a statement of consent no later than [insert period specified by local rule].

NOTE

This rule provides procedures relating to jury

trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

C. Request for Authorization to Make Recommendations and to Otherwise Communicate with the National Bankruptcy Review Commission on Matters Relating to Bankruptcy Procedures.

1. Title VI of the Bankruptcy Reform Act of 1994 established the National Bankruptcy Review Commission, comprised of 9 members to be appointed within 60 days after enactment of the Act. The duties of the Commission are:

   a. To investigate and study issues and problems relating to the Bankruptcy Code;

   b. To evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

   c. Within 2 years after it first meets, to prepare and submit to Congress, the Chief Justice, and the President a report of its findings and conclusions, together with its recommendations for such legislative or administrative action as it considers appropriate;

   d. To solicit divergent views of all parties concerned with the operation of the bankruptcy system.

2. It is likely that the Commission will study and consider procedural matters, and could make recommendations to amend the Code and Rules to deal with procedural issues. The Advisory Committee believes it would be beneficial to be able to communicate with the Commission -- on behalf of the Advisory Committee and not as a representative of the Standing Committee or the Judicial Conference -- to express views and to make recommendations on procedural matters from time to time during the two-year life of the Commission. The Advisory Committee requests authorization to make such recommendations and to otherwise communicate with the Commission.