

**INSTRUCTIONS AND PROCEDURAL GUIDANCE**  
**FOR CHAPTER 11 CONFIRMATION AND**  
**REQUIREMENTS UNDER SECTION 1129 (a)**

1. In order to enable the Court to adequately and efficiently rule on whether or not to confirm Chapter 11 Plan, the following procedural steps must be followed by the proponent of a plan:
  - a. The following items are required by the Court at least 7 days prior to the confirmation hearing:
    - 1) Statement regarding requirements of 1129 (a)
    - 2) List of outstanding pre petition tax claims, other priority claims and expenses of administration.
  - b. The following items are required by the Court at least two working days before the hearing on confirmation:
    - 1) List of Acceptances and Rejections
    - 2) Computation of Acceptances and Rejections

Note: If a case has more than 200 potential voting parties, contact the Bankruptcy Court Clerk regarding time for filing these two items.
2. The following explanatory directions and proposed forms are intended as a guidance towards compliance with the aforementioned procedure:

a. **Statement of Requirements of §1129 (a)**

The statement must be filed at least 7 days prior to the confirmation hearing, with copy served upon the creditors committee (also upon its chairman and attorney) and upon the SEC, if a corporation, and upon any party who has made a written request for a copy. This document must state how proponents of the plan will show during the confirmation hearing that the plan complies with each of the requirements of §1129. All calculations and projections must be a part of this statement.

The document, calculations and projections will be reviewed by the staff or the Judge prior to hearing. Each item will be reexamined at the hearing and testimony taken whenever necessary. The format should follow each subdivision under §1129 (a) as outlined in Exhibit 1.

A detailed explanation is required. Answers must state the specific portion of the plan referred to. Answers such as “See Plan” are unacceptable.

An amended statement showing changed items, if any, (acceptance, rejections, etc.) must be filed at least two days prior to the confirmation hearing.

b. Declaration of Outstanding Pre-Petition Unsecured Tax Claims §1129 (a)(9)(c) and Outstanding Involuntary Gap Expenses, Other Priority Claims and Expense of Administration §1129 (a)(9)(A) and(B)

A list of outstanding pre-petition taxes and outstanding involuntary gap expenses, other priority claims, and a detailed projection of the expenses of administration as of effective date of the plan (See § 1129 (a)(9) must be filed at least 7 days prior to the confirmation hearing.

The format is shown at Exhibit 2. Counsel for proponent of the Plan, should contact the various creditors shown on the list for accurate figures concerning expenses, fees, commissions etc., before filing the list. An amended declaration must be filed at the confirmation hearing, if any addition occurs during the week prior to the hearing.

The statement regarding requirements of §1129 (a) must certify to the accuracy of the list and show how and when these debts will be paid. See items §1129 (a)(9)(A)(B) and (C)

These claims cannot be voted and should not be shown in the list of Acceptances and Rejections. However, these claims can be voted to determine whether they are to be paid in full upon confirmation or are to be paid over a period of time.

c. List of Acceptances and Rejections

1) A list of acceptances and rejections must be filed with the Court no later than two days prior to the hearing on confirmation. If the case has over 200 creditors and shareholders, consult the staff regarding the time needed for the calculation.

2) The list of acceptances and rejections must show the total dollar amount and total number of acceptances and rejections for each class, and must be listed accordingly to the format shown in Exhibits 3 and 4, only those creditors or

interest holders filing an acceptance or rejection are to be shown on the list.

All acceptances and rejections filed with the Court are recorded and docketed, but the only votes which will be counted are those by creditors and interest holders of impaired classes. Acceptances and rejections received by attorneys should be marked with the schedule number or claim number and should be filed with the Court as soon as possible. They should never be returned to the creditor or interest holder because of alleged defects.

The definitions of the column headings on Exhibit 3 and 4 are:

Claim Number or Schedule Number

The acceptances and rejections of creditors and interest holder should be listed by separate classes in the order shown in schedules and claims docket. If a claim has been filed, show the claim number; otherwise, show the scheduled number (if schedules A-1, A-2 and A-3 do not show numbered creditors, creditors should now be numbered by the plan proponent-beginning with No. 1 on Schedule A-1, and numbering all creditors consecutively.

Name

The full name of each creditor should appear under “name”.

Amount

a) If the creditor has filed a claim, the amount of the claim should appear under either acceptance or rejection to record the vote of the creditor. If no claim is on file, the scheduled amount should be used. Disputed (unliquidated, contingent or disputed) claims on file should be included in the list, since the Judge may allow these temporarily for purposes of confirmation, if appropriate. Acceptances or rejections for contingent, unliquidated or disputed scheduled amounts for which no claim is filed should be listed without showing an amount, but showing the word “disputed” and should not be included in the computation.

b) Any acceptances or rejections filed by an “insider” should be included in the list with an amount; however, an asterisk should be inserted immediately after the amount for possible exclusion under §1129 (a) (10).

c) The Clerk will verify the amounts, acceptances, and rejections shown on the filed list of Acceptances and Rejections.

d) The attorney can obtain a copy of the Court's claims register to help him prepare the list of acceptances and rejections. All copies are \$0.50 per page.

d. Computation of Acceptances and Rejections

The computation of acceptances and rejections must accompany the list of Acceptances and Rejections. The format is shown at Exhibit 5 and 6. If the box marked "unimpaired" is checked, there is no need to complete the balance of the form for the particular class of creditors; however, it must be shown why that class is not impaired (to be paid in full, to be reinstated after defaults are cured, etc.).

e. Deposit of Funds for Pre-petition Tax Claims/Priority Claims/Expenses of Administration and Cash Payment to Other Creditors

Any amounts payable upon confirmation for administrative expenses involuntary gap expenses, priority claims, pre-petition tax claims, and cash payments to classes of creditors, are to be deposited in a separate bank account.

All checks written on the account must state the debtor's name, the case number, check number, date, payee, and the statement: "Void if not cashed within 90 days of issuance" (or such other time as shall be set in the confirmation order).

If checks remain uncashed after the state time, a report of unclaimed dividends must be filed with the Court and a check for the unclaimed amount must be drawn payable to the debtor or the entity acquiring the assets of the debtor. (Unclaimed dividends in Chapter 11 cases become their property under §347 (b).

All checks issued on the "deposit account", even if voided, and all bank statements must be filed with the Court, when the account is closed. These must be submitted within a month after the account is closed and must be received before the final decree is signed.

f. Objections to Claims or Interests

Unless extended by order of the Court, objections to claims and interests must be filed at least 11 days prior to the first date set for the confirmation hearing. Creditors whose claims are objected must be served with copy of the objection and a Notice of Hearing indicating the objection will be heard at the hearing on confirmation.

g. Final Report and Request for Final Decree

Upon consummation of the plan, a Final Report and Application for Final

Decree must be filed with the Court. It must show all payments to creditors, interest holders, expenses of administration, issuance of stock, etc., under the plan; state that the plan is fully consummated; and request final decree. Attached as Exhibit 7 is a copy of Statistical Report which the Clerk must file upon closing of each case. The Final Report must contain all figures necessary for completion of the Clerk's Statistical Report. Figures shown in the Final Report should be shown in the same sequence set forth in Exhibit 7.

STATEMENT RE: REQUIREMENTS OF §1129 AND CHECKLIST FOR  
CONFIRMATION HEARINGS

1. §1129 (a) (1) PLAN COMPLIANCE WITH CHAPTER 11

Show that plan complies with applicable provisions of Chapter 11 because it contains what is required for a plan and what is permitted for a plan. See §1122 and §1123.

2. §1129 (a)(2) PROPONENT COMPLIANCE WITH CHAPTER 11

Show that the proponent has complied with the applicable provisions of Chapter 11 including statement that proponent is a person or entity who could file a plan and has made the appropriate disclosures.

3. §1129 (a)(3) PLAN PROPOSED IN GOOD FAITH

State that plan has been proposed in good faith and not by any means forbidden by law.

4. §1129 (a)(4) DISCLOSURE OF PAYMENTS, OFFICES AND INSIDERS

Show compliance with disclosure of payments made or to be made to various people cited in Subdivision (4) and disclosure of officers and insiders pursuant to Subdivision (5).

5. §1129 (a)(6) RATE CHANGE APPROVED BY REGULATORY COMMITTEE

Show approval by appropriate regulatory commission if any changes of regulated rates are provided in plan.

6. §1129 (a)(7) ACCEPTANCE/BEST INTEREST

Show that the individual members of each impaired class which accepts the plan will receive at least as much as they would have received on a liquidation, unless all votes from the class are in favor of confirmation. This is the “best interest of creditors” test

7. §1129 (a)(8) ACCEPTANCES/UNIMPAIRED

Show that each class has either accepted the plan or is not impaired under the plan

8. §1129 (a)(9) ADMINISTRATIVE EXPENSES/INVOLUNTARY GAP EXPENSES  
OTHER PRIORITY CLAIMS/PRE-PETITION TAXES

(A) The effective date of the plan should be designated. This will probably be the date of confirmation or the date the confirmation order becomes final.

9. (B) The proponent must provide lists of expenses of administration and priority and involuntary gap claims (See Exhibit 2), and must show how and when payment in cash equal to the amount of the allowed claims will be paid, except to the extent that the holder of a particular claim has agreed to a different treatment of the claim, such treatment must be shown.

10. (C) The proponent must show provision made for payment on the effective date of the plan of the allowed amount of wage claims, employee benefit claims and lay-away claims, unless the class has consented to deferred payment. Details of any deferred payment must be shown.

11. (D) Provisions for payment of pre-petition tax claim must be shown, either in cash on the effective date of the plan or deferred cash payments over a period not exceeding six years after the date of assessment and of a value equal to the allowed amount of the claim as of the effective date of the plan. The proponent must specify the assessment date. In addition, the proponent must show the interest rates or discount factors used so that the Court can review the calculations.

12. §1129 (a)(10) ACCEPTANCES BY ONE CLASS

Show that at least one class of claims has accepted the plan, without including any acceptance of the plan by an insider holding a claim of such class. The LIST OF ACCEPTANCES AND REJECTIONS AND COMPUTATIONS (Exhibits 3 and 4 must identify the insiders as defined by §101(25) ).

13. §1129 (a)(11) FEASIBILITY OF PLAN

Proponent must show that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization (unless such liquidation or reorganization is proposed in the plan itself).

14. §1129 (nb)(1) & (2) CRAM-DOWN

(Note: This guide is intended for Chapter 11 confirmation hearings where there are no cram down provisions and no 1111(b) elections. If cram-down or 1111(b) election is involved, the statement must show compliance with the requirements of 1129 (b) and 1111 (b) where applicable). Appropriate computations and projections must be attached. Contact the Clerk for further requirements and guidelines).

15. §1129 (c) TWO OR MORE PLANS

Each proponent must state reasons why its plan should be confirmed; each must submit to the Court all documents required by this procedural guide.

16. §1129 (d) AVOIDANCE OF TAXES

State whether any governmental entity that is a party in interest has requested that the plan not be confirmed because it was proposed to avoid taxes or Section 5 of the Securities Act of 1993, and the proponent's position concerning such request.

17. §1123 (a)(6) PROHIBITION OF ISSUING NON-VOTING EQUITY SECURITIES

Show that the plan complies with §1123 (a) (6) in that it prohibits issuance of non-voting equity securities and provides for protection of preferred stockholders.

18. §1141(d) DISCHARGE OF DEBTOR/DISCHARGE HEARING

State whether or not, in the opinion of counsel, the Order of Confirmation will act as a Discharge of Debtor. If so, the discharge hearing required by §524(d) will be scheduled within 30 days from date of Order of Confirmation.

19. DEPOSIT AND DISTRIBUTION

FIX TIME AND MANNER OF DEPOSIT AND DISTRIBUTION OF CASH OR OTHER CONSIDERATION UNDER THE PLAN.

State proponent's proposal.

20. APPROVAL OF PROPOSED ORDER OF CONFIRMATION

State proponent's position on the effect of confirmation and consummation on the creditor's and equity security holders of the debtor.

OUTSTANDING EXPENSES OF ADMINISTRATION...INVOLUNTARY GAP EXPENSES  
 OTHER PRIORITY CLAIMS...PRE-PETITION TAX CLAIMS...CASH PAYMENTS UPON  
 CONFIRMATION TO CREDITORS

ADMINISTRATIVE EXPENSES: 1129 (a) (9) (A); 507 (a) (1)

CLERK, U.S. BANKRUPTCY COURT (\$0.50 per notice)	\$ _____
ATTORNEY FOR DEBTOR	\$ _____
ATTORNEY FOR TRUSTEE	\$ _____
ATTORNEY FOR CREDITORS' COMMITTEE	\$ _____
ACCOUNTANT	\$ _____
TRUSTEE	\$ _____
EXAMINER	\$ _____
CREDITORS' COMMITTEE (Expenses)	\$ _____
OTHER (attach list)	\$ _____

ADMINISTRATIVE EXPENSES AND INVOLUNTARY GAP  
 EXPENSES: 1129 (a) (9) (A) ; 507 (a) (1) and (2) (attach list) \$ \_\_\_\_\_

PRIORITY CREDITORS: 1129 (a) (9) (B) ; 507 (a) (3) , (4) , (5)

WAGE CLAIMS	\$ _____
EMPLOYEE BENEFIT CLAIMS	\$ _____
LAYAWAY CLAIMS	\$ _____

PRIORITY CREDITORS 1129 (a) (9) (c) ; 507 (a) (6)

PRE-PETITION TAX CREDITORS: (attach list) \$ \_\_\_\_\_

CASH PAYMENTS TO CLASSES OF CREDITORS UPON  
 CONFIRMATION UNDER TERMS OF PLAN

Class A	\$ _____	
Class B	\$ _____	\$ _____
		\$ _____

NOTE: Statements re requirements of 1129(a) Exhibit 1 must state in detail how and when these payments will be made.

CHOOSE APPROPRIATE FORM

( Designate insiders as defined by § 101 (25) by asterisk (\*))

(Designate contingent, unliquidated or disputed claim for which no claim has been filed as “Disputed” without amount)

CLAIM NUMBER	SCHEDULED NUMBER	NAME	AMOUNT FILED OR SCHEDULED	ELECT CLASS B	ELECT STOCK	ELECT CASH	ACCEPTANCE	REJECTION
		List in the same order shown on schedules and claims docket		Reduce to \$500.00				

LIST OF ACCEPTANCES AND REJECTIONS

CHOOSE APPROPRIATE FORM

( Designated insiders as defined by §101 (25) by asterisk (\*))

( Designate contingent, unliquidated or dispute claims for which no claim has been filed as “Disputed” without amount)

CLAIM NUMBER	SCHEDULED NUMBER	NAME	AMOUNT					
			CLASS I		CLASS II		CLASS III	
			ACCEPTANCE	REJECTION	ACCEPTANCE	REJECTION	ACCEPTANCE	REJECTION
		(list in same order shown on schedules and claims docket)	\$	\$	\$	\$	\$	\$



