

***For Immediate Release***

## **Bankruptcy Is a Bad Business— Consider an Out-of-Court Adjustment Instead**

*Columbia, Maryland: May 31, 2005*—Tired of chasing a delinquent account? Worried that a debtor's cash flow problems are taking a turn for the worse? Even dreading the "B" word? The good news is that you have a practical alternative, and a far better solution at hand. Several affiliates of the Columbia, MD-based National Association of Credit Management (NACM) can help organize an out-of-court settlement, also known as an "adjustment" or "workout".

This win-win alternative enables unsecured creditors to keep control, outside the formalities of a bankruptcy court. "A workout is almost always less expensive, more efficient, and less cumbersome than a Chapter 11 filing," says Bob Hoder of CMA Business Credit Services in Burbank, California. "The consensual process follows all the bankruptcy rules, without the expense burden, and allows the parties themselves to retain control."

The procedure is based on common sense principles and communication. A creditor, a debtor or their respective attorneys can approach the NACM adjustment facilitator. "We then invite the main creditors and the debtor together to a meeting, where the debtor provides financial information and answers questions," explains Mike Joncich of CMA. The creditors form a committee and hire an attorney. A plan is formulated, circulated and voted upon.

Meanwhile, the NACM Affiliate acts as the committee's secretary and communications liaison. It may hold a blanket security interest in all the assets of the debtor, for the benefit of the creditors, which is provided in exchange for a moratorium on collection activities. On a case-by-case basis, the amounts and schedules for disbursements are negotiated in a flexible forum, while the Affiliate monitors the debtor's operations and finances. Eventually, the Affiliate serves in a fiduciary role as disbursement agent. "The only bounds are the imagination of the parties involved, and what the creditors and debtor will agree to," says Mike Lawrence of NACM Southwest in Dallas.

A workout avoids the stigma, time and expense of a bankruptcy, while it speeds up the distributions to creditors. "Bankruptcy represents uncharted territory," reminds Joncich. "It is often hard to estimate the ultimate costs, or what will be contested." The workout, on the other hand, is less labor intensive. It requires no courtroom appearances, and few formal documents, resulting in fewer legal and accounting fees. Small companies, with less than \$10 million or so in assets, usually cannot afford the drain of bankruptcy expenses. All too often, they run out of money before they can reorganize during their limited window of opportunity.

"The negative sting of bankruptcy for any company in the public eye hurts terribly," Lawrence adds. "Once word is out, suppliers are less likely to take the risk of continuing the relationship because of the uncertainty of the bankruptcy outcome."

Another critical factor is that it is the credit manager who has the direct relationship with the debtor, most often with the person responsible for the accounts payable function. Greg Garner, President of San Diego Credit Association/NACM San Diego, explains that "upon learning that the customer is unable to pay, due to issues such as cash flow problems, the credit executive has the opportunity to wear a different hat, and 'counsel' the customer". Garner reminds that benefits include "educating the customer about an alternative not previously considered, demonstrating goodwill to the existing relationship and, if the workout is successful, payment of the original debt."

"Workouts cut through red tape, too," suggests Abby Odneal of NACM Southwest. In bankruptcy court, the formality of filings, motions, pleadings, appearances and lengthy documents makes for slow progress and much greater expense. A speedier resolution means that creditors receive their distributions all the sooner.

Supposing, however, that the committee and the debtor cannot agree on a viable plan, or say that a debtor is beyond salvage? "If the debtor's situation makes that clear, it's worth knowing. If a business is dead, put it to bed and don't spend more time fooling with it!" Lawrence advises. Or, if a Chapter 11 is warranted, "at least the committee is already established, and the early groundwork resolved. It is still a smoother and less costly transition to bankruptcy, if necessary," says Joncich.

Nobody likes to deal with slow-paying debtors or to relinquish any portion of accounts owed. But when those circumstances arise, creditors should consider how to make the best of a difficult situation. Working as a group, creditors can exert a powerful psychological influence on debtors, who may even be in some denial. At the same time, it is a source of confidence to know that a creditors' committee will be acting as fiduciaries, under the advice of an attorney. And the NACM Affiliate lends further credibility, as a representative of the creditors' best interest.

Creditors can take several avenues to pursue a workout. Often, they will initiate a dialogue with a debtor, and mention the advantages of an out-of-court adjustment. Debtors and their attorneys may not be aware of the benefits of settling out-of-court. For example, the debtor may be able to keep employees; management would be less distracted than under Chapter 11 reporting requirements; cash may be preserved for operations rather than legal expenses; and the company may be able to return to profitability.

In other cases, creditors may take action and effectively organize themselves as part of a national credit group effort. Most important is for creditors to know they have a resource at NACM to use. They can call an NACM Affiliate directly, to discuss their concerns and available options.

"The key is to be proactive," reiterates Garner. "A successful workout may lead to an optimal resolution for both debtor and creditor," he adds, "and preserve the relationship between the two."

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The National Association of Credit Management (NACM), headquartered in Columbia, Maryland, supports more than 25,000 business credit and financial professionals worldwide with premier industry services, tools and information. NACM's Credit Manager's Index (CMI) is a national economic indicator used by leaders in business, education and the government to measure growth in the U.S. economy. NACM and its network of Affiliated Associations are the leading resource for credit and financial management information and education, delivering products and services, which improve the management of business credit and accounts receivable. NACM's collective voice has influenced legislative results concerning commercial business and trade credit to our nation's policy makers for more than 100 years, and continues to play an active part in legislative issues pertaining to business credit and corporate bankruptcy.

If you are a journalist and wish to obtain a press pass to NACM's 109th Annual Credit Congress in New Orleans, June 12-15, please phone Norma Heim at 410-740-5560 or contact by e-mail: [normah@nacm.org](mailto:normah@nacm.org).

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