

## The Functions of the Securities and Exchange Commission in Corporate Reorganization Proceedings under Chapter X of the Revised Bankruptcy Act.

Chapter X of the National Bankruptcy Act of 1935 imposes certain duties upon the Securities and Exchange Commission in connection with corporate reorganizations. Briefly, it provides that the Courts shall have the technical facilities of the Commission at their ready disposal in reorganizations effected under Chapter X. The Courts, in the consideration of reorganization plans and the complex legal, financial, and business problems involved in the plan and the proceedings, thereby have access to expert and impartial assistance. In the larger cases, where the scheduled liabilities of the debtor corporation undergoing reorganization exceed \$3,000,000 the Court automatically refers proposed reorganization plans to the Commission for an advisory report. In smaller cases, the Court may or may not refer plans to the Commission, as it sees fit. [Footnote: Section 172]

The advisory report is an independent analysis prepared by the Commission with the aid of its legal and financial staff. It provides the Court with a disinterested survey and critique of the plan. The Commission has had the benefit of extensive experience in a somewhat similar capacity under the Public Utility Holding Company Act of 1935. It has, in addition, made a broad study and investigation of corporate reorganizations pursuant to the provisions of the Securities Exchange Act of 1934.

In addition to advisory reports, the Court may obtain the advice and assistance of the Commission throughout the reorganization by making the Commission (or by allowing it to become) a party to the proceedings. In any case under Chapter X the Court may invite the Commission, or upon the request of the Commission may permit it, to intervene as a party to the proceedings. [Footnote: Section 208] In this capacity the Commission, however, is without power to take any appeal in the proceeding [Footnote: Section 206], or, in any case, to receive any allowance out of the estate. [Footnote: Section 242 (2)]

### The Commission's Functions

The Commission's functions under Chapter X are purely advisory in character. It has no authority under the Act either to veto or require the adoption of a reorganization plan. It has no authority to adjudicate any of the other issues arising in a proceeding. The facilities of its technical staff and its disinterested judgment are merely placed at the service of the Court.

Nor does the Commission have authority to conduct its own proceedings in these cases, to hold its own hearings on plans, etc. The work of the Commission under Chapter X is done as an integral part of the proceedings before the Court. The Commission is in a subordinate position in these proceedings as a party. Hence the dangers of duplication are eliminated; the risks of delay minimized.

There are a multitude of matters arising in a reorganization proceeding with respect to which the Commission's active participation or its advisory report, or both, may be of assistance to the Court. A number of these are suggested in the following paragraphs:

The Commission is equipped, by virtue of its trained staff and its experience under the Holding Company Act of 1935 and the investigation of corporate reorganizations made by its Protective Committee Study, to offer the Courts a disinterested, expert opinion on financial matters arising in the course of administration of the estate, while reorganization is pending; e.g. on the desirability as a financial matter of the issuance of trustee's certificates in a particular case. [Footnote: Section 116(2)]

The Commission's facilities would make it possible for it to undertake investigations into trading activities by members of committees and to report thereon to the Courts in connection with allowances of compensation to such persons.

The Commission's experience under the Securities Act of 1935, and the Securities Exchange Act of 1934, renders appropriate for the Commission to submit to the Court recommendations concerning reports on the operation of the estate by the Trustee, and periodical reports to creditors and stockholders. [Footnote: Section 190]

The Commission's facilities would permit it to render assistances with respect to appraisals and valuations in connection with reorganization plans.

The Commission's Protective Committee Study made vary extensive examinations of the content and operations of deposit agreement and trust indentures; and the knowledge and experience it has thus acquired may be of use to the Court in the exercise of its power to scrutinize and disregard the terms of such instruments. [Footnote: Section 212]

The Commission is prepared to render its assistance in the matter of the court's determination of reasonable allowances for compensation and expenses in reorganization proceedings. Similar duties already devolve on the Commission by the terms of the Holding Company Act of 1935.

The Commission's experience should enable it to be of particular assistance in the consideration of reorganization plans, and the preparation of advisory reports thereon, e.g., the problems of the fairness of plans; the problems relating to the feasibility of such plans.[Footnote: Section 221(2)] It also should be helpful in examining the fairness of provisions relating to the terms and position of new securities to be issued under a plan, and their conformity with sound business and accounting practices. [Footnote: Section 216(12) (b)]

### Commission Appearances in Proceedings

As indicated earlier, upon the invitation or with the approval of the Judge, the Securities and Exchange Commission may become a participant in proceedings under Chapter X. In this way the facilities of the Commission should be at the constant and ready disposal of the Courts during the whole course of the proceedings. In this way, the work of the Commission would become an integral part of the proceedings. As a consequence, the Commission should be able to become most fully acquainted with the facts and problems to be considered in its advisory reports.

It is the Commission's view that it should render assistance to the Courts only in those cases where it is a party. Its work would be done in open court on an equal footing with all other parties.

As a general matter it is perhaps appropriate that the Commission participate in Chapter X only where the latter involve issues of securities outstanding in the hands of the public, or where public interest is in some other way involved. In this connection the size of the case might not itself be the sole criterion, for the Commission might appropriately participate in cases where the investor interest is small (e.g., only \$250,000) but in which such investors are not represented or where they lack adequate representation. As a general matter in smaller cases in which there are present only business creditors and the debtor is a small or closely held corporation, neither the Commission's advisory report nor its active participation would seem to be normally necessary or appropriate. Both cases lack the complexity of the customary reorganization; and, further, most cases of this sort are in substance "compensation" cases, which by the Chandler Act are relegated to proceedings under Chapter XI thereof.

In carrying out its duties under Chapter X, the Commission is eager to cooperate with the Courts in every way possible. At times the Commission will ask to become a party; at other times it will omit the request of the Courts. But in all cases the Commission will endeavor to keep informed on the nature of the cases under Chapter X in order to have an informed judgment as to whether its participation would be fruitful and practicable in particular instances.

In order to facilitate the performance of its duties, the Commission now has permanently stationed in its various Regional Offices qualified staffs of lawyers, accountants and analysts assigned exclusively to the performance of those duties. The presences of these staffs in the field will make them readily available to the Courts, and thus facilitate the work of the Courts and the Commission.

Among the objectives of any corporate reorganization are the presentation and realization of all the values in an enterprise, a fair and equitable allocation of those values among the various classes of security holders and other claimants, and the emergence of the corporation from reorganization under a financially sound plan and in the hands of competent and loyal management. The commission's functions under Chapter X are directed to aiding the Courts in making possible the attainment of these objectives. We pledge our wholehearted cooperation towards that end.

William O. Douglas, Chairman