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"REORGANIZATION PROVISIONS OF THE CHANDLER BILL"

ADDRESS

of

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Reorganization Provisions of the Chandler Bill

It is my privilege to discuss with you this afternoon some of the salient provisions of the Chandler Bill affecting corporate reorganizations. Chapter X of the bill is a complete rewrite of Section 77B of the Bankruptcy Act. This bill, as you doubtless know, was passed by the House at the last session of Congress and was pending before the Senate at the time of adjournment. It is expected that it will receive further consideration at the next session.

Section 77B was an emergency piece of legislation designed to meet an emergency condition. It was enacted during a period of economic depression which generated a wave of defaults on corporate obligations previously unequalled in our financial history. It created a procedural machinery which enabled distressed corporations to reorganize with the consent of less than 100 percent of their security holders and without resort to the cumbersome, time consuming and expensive legal processes theretofore available. And broadly speaking, 77B has fulfilled its immediate purposes. Its superiority to the old devices is apparent and well known. It is difficult to imagine the chaos which would have resulted if the thousands of corporations which in the last three years have sought refuge under 77B had been forced to resort to equity receivership and the ritual of the foreclosure sale. There is little doubt that the general framework of Section 77B and its fundamental principles have found a permanent place in our bankruptcy legislation.

It was expected, however, that experience with Section 77B and study of its operation and effects would disclose the need of revision. In making this statement I do not intend any reflection upon the draftsmen of 77B. As I have stated, they were meeting an emergency situation, and in large measure

they were ploughing new ground. Under the circumstances, it was almost inevitable that a critical and pragmatic survey of their work would bring to light weaknesses in the law and suggest points at which it would be improved.

The reorganization system created by Section 77B has been included in the studies of congressional committees, in the studies of the Commercial Law and Bankruptcy Committee of the American Bar Association, and in the studies of the National Bankruptcy Conference. Committees of various other bar associations have given close attention to the operation of the legislation and have reported their recommendations to the federal judges and others. The Securities and Exchange Commission pursuant to a Congressional mandate has been studying the problems of corporate reorganization for almost three years, including those raised by Section 77B. In the course of its study, the Commission has made both a statistical examination of 77B cases and a case history investigation of a number of proceedings, and has conferred with judges, lawyers, bankers and representatives of industry. As might be expected in view of the complexity and national significance of the problems involved, these various studies have not produced identical conclusions as to the content and scope of the desired revisions to the existing legislation. In the opinion of the National Bankruptcy Conference, The Securities and Exchange Commission and others, the need has been shown of far-reaching revision of the existing statute - a revision more comprehensive than could be produced by tinkering with a sentence here, a paragraph there. It is believed that the situation calls for revision such as that embodied in Chapter X of the Chandler Bill.

The production of the Chandler Bill was in reality a joint product of the efforts of these various agencies. It illustrates how profitable it is for responsible government, bent on reform and progressive measures, to join hands with responsible groups from business and the professions to fashion legislation which will both meet the exigencies of practical situations and the high requirements of the public interest. The effort which shaped this constructive measure is exemplary of joint ventures which profitably could be made on other fronts.

Time will not permit me to make more than a brief reference to the numerous improvements in the form and arrangement of 77B which are contained in the proposed legislation , as I wish to discuss certain substantive provisions in detail. An attorney glancing at the new bill will be impressed with its structual improvement. The long, involved paragraphs of 77B have been broken down into a number of small sections each one dealing with a single subject. This lends clarity to the bill, and also increases the ease of citation. No longer will a 77B citation have the appearance -- to use the words of Congressman Chandler -- of a "quadratic equation". Also of significance are the improved definitions, the more logical arrangement of related concepts, the removal of ambiguities and inconsistencies, and the general clarification of the language. These and other changes of similar nature will appeal to every lawyer who has struggled to grasp the meaning of the present Act.

As I have indicated, the principal purpose of 77B was to revamp and improve the judicial procedure for effecting corporate reorganizations. It has failed, however, to correct many of the shortcomings of the reorganization methods then employed. Fundamentally there was the failure fully to give recognition to the fact that reorganization is not solely a legal problem, but a business and administrative problem calling for greater supervisory

power and more express and specific mandates to the courts. Before the passage of 77B, courts were prone to regard a reorganization as a lawsuit or litigated matter. Issues of fact and law were from time to time presented to the court; the court would hear argument and make its decision. These legal issues were numerous but restricted. The courts did not extend their powers beyond them. Under 77B there was something of a shift in emphasis. The court was given broader and more express powers. But the improvement though clear was slight. The court was still largely the judge and arbiter of issues, carefully selected and nicely framed so as to present a justiciable matter. Vital aspects of the reorganization process continued to remain outside the jurisdiction of the court. Thus 77B made no effort to deal with the question of the personnel of the reorganizers. In other words, 77B left unaffected the control of the reorganization processes traditionally vested in the debtor, its banking allies, and the committees conventionally formed by them.

One aspect of this control, generally recognized as a serious defect under the old equity receivership practice, was the appointment of receivers affiliated with or friendly to this inside group. As a result, the likelihood was remote that the receivers would make any real effort to discover and to realize upon assets of the estate in the form of claims against the former management and their affiliated interests. Nor would any examination be made which would be adequate to bring to light all essential facts upon which security holders could determine intelligently what action should be taken upon a proposed plan of reorganization or whether the existing management should be continued in control of the company. Furthermore, under the receivership practice, no disinterested agency of the court was provided to articulate the investors' point of view and to render administrative assistance and advice to the court concerning all phases of the reorganization process.

77B did not cure these deficiencies. It was still possible to secure the appointment of a friendly trustee. Furthermore, the court in its discretion was empowered to continue the debtor -- that is, the existing management -- in possession. In other words, not only did 77B permit a continuation of the abuses which might arise from the appointment of a friendly trustee, but it gave its sanction to a procedure that obviously would increase the potentialities of such abuses. Data collected by the Securities and Exchange Commission show that in well over half of the 77B proceedings instituted in 1936 the debtor was continued in possession and that where a trustee was appointed he was in many cases an executive officer of the debtor.

These practices have precluded fulfillment of an important function to be performed in the course of reorganization -- that is, a searching appraisal of the past conduct and operations of the debtor. Proof is not necessary of the extreme unlikelihood that a friendly trustee will make such an examination. Likewise, the necessary facts will not be brought to light if the debtor is continued in possession. It taxes human credulity to expect that the management will investigate itself, that it will demonstrate its own accountability to the estate, that it will reveal its past history if that history would show that it was incompetent to continue in office.

Among the significant provisions of the Chandler Bill are those which remedy the deficiencies in 77B which permit this situation to exist. These are the provisions of the bill respecting the appointment of an independent trustee and specifying his duties and responsibilities. The bill requires that where the liabilities of the bankrupt company exceed $250,000 -- that is, in all cases of any appreciable size -- an independent trustee be appointed. These provisions form the foundation on which many of the other

substantive reforms of the proposed legislation are built. In fact, they constitute the basic fundamental change from existing procedure. They afford assurance that many of the important functions of reorganization which are now performed outside the proceedings will be brought within the judicial process. They afford means whereby the court assisted by its agent, the trustee, may maintain a close supervision and control over all the essential phases of reorganization.

One of the duties of the independent trustee under the bill is to investigate the acts and conduct of the debtor -- subject at all times, however, to the control of the judge. He must report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities and to any causes of action available to the estate. He has the power, with the approval of the judge, to institute suit on any causes of action he discovers.

It should be noted that these provisions in no way increase the powers now possessed by trustees under 77B. They simply vitalize the powers which equity receivers as well as trustees in bankruptcy traditionally have had. Thus, under the Chandler Bill renewed emphasis is given these powers by provisions that insure that they will be exercised for the benefit of creditors and stockholders. That is to say, there will be an investigation and report as a routine matter in every case. By the further requirement that the trustee shall be disinterested, assurance is given that his investigation and findings will not be influenced or colored by his own self interest.

The same considerations calling for the appointment of an independent trustee require that the trustee's counsel be disinterested. The importance of the role played by the lawyer in corporate reorganizations requires no elaboration. Obviously the requirement that the

trustee must be disinterested is rendered nugatory unless his counsel also is required to meet this standard. This requirement assumes greater importance when it is realized that the increased duties and responsibilities placed upon the trustee by the Chandler Bill increase the duties and responsibilities of his counsel as well.

The requirements of the Chandler Bill for an independent trustee are not based on any assumption that managements as a rule are either incompetent or dishonest. We have witnessed honest failures as well as dishonest failures. We have seen sound and conservative enterprises, honestly and faithfully managed, which could not withstand the impact of a severe economic depression. In such a case the management has nothing to fear from the proposed legislation. The trustee is expressly authorized by the Chandler Bill to retain their services at a fair salary to be fixed by the judge. The enterprise will continue to have the benefit of their experience and their intimate knowledge concerning its affairs. Their advice and assistance should prove invaluable to the trustee in the performance of his functions. And to such a management the appointment of an independent trustee charged with the duties I have described should prove an incalculable benefit. For, in every case of corporate failure, the suspicions of its security holders are aroused. With or without justification, their natural disappointment provoked by the losses sustained is translated into a feeling of resentment toward those in control at the time of the failure. Where the debtor is continued in possession and no scrutiny is made of its conduct, the suspicion and resentment of security holders continues unallayed. If the affairs of the company have been conducted competently and honestly, if the concern has failed for reasons beyond the management's control, the management should welcome a public avowal of these facts following an investigation

by an impartial, disinterested agency — the trustee — acting as an arm of the court. Such a quasi-judicial finding should go far to restore investors' confidence in the integrity of the management. Moreover it should serve as a persuasive recommendation for the retention of the same management when the plan of reorganization has been consummated and the company is discharged from the jurisdiction of the court.

From another viewpoint these provisions should have a salutary effect. Managements generally will be brought to realize that they must so conduct themselves during times of prosperity that their record will bear scrutiny should the corporation ever be forced to reorganize under the Bankruptcy Act. This will promote a healthful restraining influence on those in control of corporate enterprises.

I take it that there is little disagreement with one of the principal purposes sought to be achieved by the appointment of a disinterested trustee, namely, to implement the powers of the court so that it may exercise a more pervasive control over the proceedings; I also take it that no objection will be made to its further purposes - that is, to prevent reorganization processes from being utilized to conceal assets in the form of claims against those who should account to the estate, and to prevent the continuation in office of an unfit managerial group both during and following the reorganization period. There is, however, disagreement with the techniques to be employed to accomplish these objectives.

Thus, it has been stated that in lieu of the mandatory appointment of an independent trustee, utilization should be made of the procedural machinery already available. In this connection it has been pointed out that an examination under 21a of the Bankruptcy Act would serve the purpose of an investigation by the trustee. Such examinations, of course, have been made from time to time and have produced salutary effects. But generally they prove inadequate.

They are likely to be made sporadically and haphazardly. By and large it is only in the more notorious cases, where the conduct of the debtor has received wide publicity, that such examinations are sought. In other cases, where the conduct of the management has been more discreet -- where its acts have not been publicized -- but where, nevertheless, proper inquiry would reveal a duty to account to the estate, 21a proceedings are resorted to but infrequently. The debtor in possession obviously will not reveal the necessary facts. Dependence, likewise, cannot be placed upon protective committees organized by the company's bankers. The underwriters and the management, by virtue of financial and business relationships, are likely to have identical interests in opposing a thorough investigation of the debtor's affairs. The underwriter is often represented on the management; through such relationship or otherwise, he too, not uncommonly, is under a duty to account to the estate. He or his protective committee cannot be expected to conduct an inquiry which will reveal the existence and extent of this accountability. Furthermore, dependence cannot be placed upon the disorganized creditors. Their traditional apathy and inertia are too well known to justify an expectation that they will act with the promptness and vigor which the situation requires. Only in the rare case that *bona fide* groups of creditors are organized and take the initiative, especially at an early stage in the proceedings when such an examination serves its most useful purpose. Consequently, under existing law, reliance must be placed, if at all, upon the "striker", who roves the reorganization fields seeking opportunities to employ his peculiar talents. He experiences no difficulty in persuading some creditor or small group of creditors to file an application for a 21a examination. He seeks either an "under the table settlement" or an opportunity to share in the estate by way of an allowance

for services. I do not wish to imply that occasional 21a examinations so instigated have not been effective in disclosing the incompetency or inefficiency of the management and its accountability to the estate. But it is unfortunate that the ends of justice must be served by such entrepreneurial activity. The Chandler Bill places this important function where it properly belongs -- upon a disinterested person, who is appointed by the judge, enjoys the prestige which attaches to his position and acts as an instrumentality of the court for the benefit of the entire estate.

Then again, the position has been taken that the question of the appointment of a trustee should be left to the discretion of the court - that is to say, that in this respect 77B should remain unchanged. The argument is developed that if the management has been capable and faithful to its trust it will be continued in possession; otherwise a trustee will be appointed. This proposition, I believe, overlooks realities. Under this system it is inevitable that debtors who are disqualified from continuing in charge of the corporation's assets and its business will be continued in possession. The reasons for this are apparent. If the question is made one of discretion, the debtor's prestige will be involved. A certain stigma will attach to the appointment of a trustee. For this reason alone the debtor will exert every effort to defeat the appointment. Persuasive reasons of business expediency will be advanced. The benefits of continuity of management will be stressed. The probity of the management and its qualifications to act as a debtor in possession will be emphasized. The interests of the company's investment bankers are so frequently aligned with those of the debtor that in all likelihood they will support this position. The best legal talent available will be retained by these inside groups. Against this array of arguments who will

portray the necessity for the appointment of a trustee? It is unlikely that *bona fide* groups of creditors or stockholders will be represented at this point in the proceedings. Perhaps an attorney for a small security holder will raise his voice. But even if opposition to the continuation of the debtor in possession should appear, ordinarily it will lack the necessary evidence concerning the conduct and operation of the debtor on which the court must make its decision. The facts are in the possession of the debtor; -- only it has access to them. It requires exactly the kind of investigation which the independent trustee is directed to make by the Chandler Bill to discover the facts on which the court can decide whether or not the debtor should be continued in possession. The present 77B machinery is so geared that this inquiry may never be made.

These remarks are not intended as a reflection upon the courts. A judge must decide such questions upon the record before him. I merely desire to show that in the run of cases that record will contain a justification for the continuance of the debtor in possession. That the record does not accurately reflect the true situation is attributable not to the courts, but to shortcomings in the existing legislation.

These observations may not apply to prominent corporations where the conduct of the management has been notorious, or where security holders appear and, equipped with facts pertaining to the past management of the company, urge the appointment of a trustee. Even then the management and the company's underwriters may accept a trustee only after a court battle so bitter that the ill-feeling provoked may prove a disruptive force throughout the duration of the proceedings. And there is always the possibility that leave to appeal may be granted, involving expense and uncertainty. Inevitably the final consummation of the reorganization will be delayed as the parties in interest mark time pending the appellate court's decision.

These effects assume more serious proportions when it is realized that this controversy occurs almost at the commencement of the proceedings, at a time when the energies of the parties in interest should be directed to marshalling assets, determining important questions of business policy and generally laying the foundation for a sound and constructive plan of reorganization. This disruptive controversy will be avoided if the appointment of a trustee is made a matter of course. By the same token the stigma which now attaches to the management as a result of the appointment will no longer exist.

Such emphasis as I have placed upon the duty of the trustee under the Chandler Bill to scrutinize the conduct of the management should not obscure other duties of paramount significance which the bill requires him to discharge. These relate principally to the preparation and proposal of a plan of reorganization. In fact, I believe that it is in this connection that the trustee will perform perhaps his most important function. Under the bill it is the trustee's duty to prepare a plan and submit it to the court. As an aid to the trustee in the performance of this important function, any stockholder or creditor may submit a plan or suggestion for the plan to the trustee. The trustee is directed to give an appropriate notice to this effect to the security holders. Upon the filing of a plan by the trustee, a hearing is held upon this plan. At this hearing alternative plans may be proposed by the debtor or any creditor or stockholder. Subsequent to this hearing the judge enters an order approving a plan, whereupon the trustee transmits it to creditors and stockholders. As a necessary preliminary to the preparation of a plan by the trustee or by others, it is the duty of the trustee to assemble the essential data upon which the plan will be based. He is specifically directed to make an investigation of the property, liabilities and financial

condition of the debtor, the operation of its business and generally all matters relevant to the formulation of a plan. He is further directed to submit his findings to the judge and to security holders. In substance, the independent trustee serves as the vehicle for bringing into the reorganization process judicial and administrative supervision, scrutiny and control over the formulation and negotiation of plans of reorganization.

The advantages to be derived from the foregoing provisions are clear. In the first place, these basic and important functions will no longer be the sole province of a small coterie of directors and bankers and their chosen protective committees. In the second place, the presence of this officer of the court will give increased assurance that the facts essential to the preparation of plans of reorganization will be ascertained, at the same time avoiding needless and costly duplication of effort and expense in the performance of this necessary undertaking. And finally, with the independent trustee as the "clearing house" for proposals of plans by creditors and stockholders, there will result (or greater opportunity will be provided for) a larger measure of participation in these activities by *bona fide* investors.

The desirability of these objectives has been demonstrated in the reports of the Securities and Exchange Commission to the Congress. It is essential that the monopoly which the inside groups presently possess over the formulation and negotiation of the plan of reorganization be broken. The history of reorganization demonstrates that their objectives are often incompatible with the interests of the security holders, the real owners of the company. The Commission's reports are replete with instances where such conflicts of interest existed and where as a consequence the security holders suffered immediate or potential injury. In contrast, control of the reorganization process should be

lodged with *bona fide* security holders and their direct representatives. It is their investment which is at stake in any reorganization. But under the existing system they are generally powerless to act. Such independent action as may appear is in large measure limited to "strikers" who seek to capitalize upon their nuisance value, or to outside groups who neither own nor represent *bona fide* interests and are primarily motivated by the desire to obtain control of the new or reorganized company.

The provisions of Section 77B have tended further to solidify the control possessed by the inside group. Under the existing Act no restrictions are placed upon the power of the debtor to prepare and submit a plan. In contrast onerous restrictions are placed upon investors. They must obtain the approval of a substantial percentage of creditors or stockholders merely to propose a plan. They are further handicapped by the difficulty in obtaining comprehensive and accurate data concerning the company's operations, past performances and future prospects. A debtor continued in possession, of course, has this information readily available. It is difficult to understand why a debtor should receive these special privileges. Rather it would seem more fitting and just to award them to the real owners of the corporation.

The Chandler Bill forsakes this conventional procedure. The trustee is made the focal point of reorganization, and the whole system functions around him. Full opportunity, however, is provided for investor participation in the determination of the future allocation of the company's assets, earnings and control. Furthermore, the trustee's investigation and report will provide the investors with the data necessary for them to participate intelligently in the proceedings. The trustee, of course, will be in a peculiarly advantageous position to render an intelligent report on these matters. He will

be the operating head of the company and of necessity he must become thoroughly conversant with its affairs. Furthermore he will have free access to all its books and records. At the same time, recognition is given in the bill to the fact that, left to their own devices, investors might not take the initiative, or if active investor interest from many divergent groups should appear, progress toward a reorganization might dissolve in a chaos of talk. Here the trustee will perform one of his most important functions. He will furnish the initiative and the drive toward the consummation of a reorganization. By clothing the judge with the power to fix a time within which the trustee must file a plan, the bill gives assurance that the trustee will discharge this duty.

It is the trustee's further function to reconcile the divergent views expressed in the plans submitted by investors, to weed out the proposals that are unfair or impractical and to evolve a plan which is both feasible and equitable. In all this he, in a sense, is performing the functions of a reorganization manager; but he does it within, not outside the proceedings, as an agency of the court.

The Chandler Bill proposes a further significant change in the existing procedure for the acceptance and consummation of a plan. Under 77B a plan may be negotiated entirely outside the processes of the court and submitted to security holders for acceptance. There is no requirement in the statute that at this stage of the proceedings it receive either the scrutiny or approval of the court. The plan probably represents the product of a protracted period of bargaining among the debtor, the company's underwriters, their protective committees and such other representatives of security holders as may have obtained sufficient standing or representation to demand the right to be heard in the negotiations. A further protracted period may elapse before the requisite statutory assents to the plan have been obtained.

Frequently it is not until this late date that the reorganizers lay the plan before the court for its scrutiny and request its seal of approval. At this point in the proceedings, great pressure is brought on the court to accept the plan presented to it. There is then a natural reluctance on the part of the court to withhold approval of the plan or to insist upon its drastic alteration. To do so might mean that the time, effort and money of the reorganizers have been spent to no avail and inevitably the consummation of the reorganization would be delayed. Persuasive as these considerations may be, and it is certain that they will be pressed upon the court, there is the even yet more impressive argument that the plan has met with the approval of creditors and stockholders. 77B and equity reorganization practictioners are familiar with this argument and with its persuasiveness with the courts. It serves to divert attention from the merits of the plan to its ostensible backing and to induce a natural reluctance to run counter to the apparent wishes of a large percentage of investors. It is not surprising, therefore, that despite their occasional disclaimers to the contrary, there is a tendency on the part of the courts to regard the amount of approvals as strong evidence of fairness. Thus, in one case the court noted that the preponderance of assents to a plan was "highly significant of its fairness". While exceptions may occur - while courts at a late stage in the proceedings may order substantial changes in plans which have met with the seeming approval of an overwhelming majority of creditors and stockholders, the normal effect of the present practice is approval of such a plan without substantial changes. Thus it is that perhaps the court's most important function, the scrutiny of a plan to determine its feasibility and its fairness, often becomes but little more than a formality.

It is pertinent to examine for a moment the significance that should be attributed to the fact that the plan has been accepted by a large percentage of security holders. The history of reorganization indicates that this backing of the plan is often illusory. It frequently does not represent the considered, informed judgement of those affected by the plan. In the first place, there is no machinery under 77B which issures that complete informative data concerning the situation will be submitted to security holders. Instead, the extent and character of this information is largely left to the determination of the reorganizers. In the second place, even a casual acquaintance with solicitation techniques discloses that unfair and oppressive methods are frequently employed.

Chapter X of the Chandler Bill seeks to remedy these conditions. This it accomplishes in two ways. First, both the court and the security holders are furnished detailed information concerning the property, business and financial condition of the debtor through the medium of the trustee's reports. Second, the bill prohibits the solicitation of any assents to a plan until after the court has entered an order approving it as fair and equitable and feasible. In other words, before the assents of security holders are solicited the court must give careful consideration to the plan and determine whether or not it is in the interests of investors. Under these provisions it will have a real opportunity to consider the plan prepared by the trustee and such other plans as may be filed directly with it by security holders or the debtor. No longer will the court be asked to approve a plan which has already been approved by creditors and stockholders. No longer will the court be subject to the natural disinclination to reject a plan late in the proceedings.

It should be observed that this provision constitutes no radical departure from the procedure followed in many 77B cases. Some of the courts have recognized the practical wisdom of according at least preliminary consideration to a plan of reorganization prior to the solicitation of assents. They accordingly have scrutinized plans in order to determine whether they should be submitted to security holders. But even where such scrutiny is had, judicial opinion is divided as to its proper scope and effect. These uncertainties and inconsistencies will disappear if the proposed legislation becomes law.

The provisions of the Chandler Bill respecting the management of the reorganized company are of paramount importance to investors. These require, first, that the manner of the selection of the management as specified in the plan shall be in the interests of investors and consistent with public policy, and second, that the judge in confirming the plan must be satisfied that the appointment of the particular management to office or their continuation in office is likewise in the interests of investors and consistent with public policy. Under existing practice, courts generally deem the selection of directors and officers or voting trustees to be beyond their jurisdiction and accordingly leave the selection to the conventions of the parties. 77B is silent on this point. In recognition of the principle which has been stated so often as to become commonplace, that quality and integrity of management are as important to investors as the allocation of the company's assets and earnings among the various classes of security holders, this defect in 77B is remedied by bringing the selection of management within the jurisdiction and under the supervision of the court.

Further important provisions of the Chandler Bill are those relating to the participation of the Securities and Exchange Commission in the

proceedings. In brief, the Commission is given the power to file an appearance in any proceeding under Chapter X and thereby become a party in interest to the same extent as if a formal petition for its intervention had been granted. In any case the court may refer plans of reorganization to the Commission for its examination and report. In the cases of major importance, that is, where the scheduled liabilities exceed $3,000,000 and where presumably there is a substantial investor interest, the court is required to submit to the Commission any plan which it deems worthy of consideration. The Commission's report, or a summary thereof, is required to be transmitted to security holders when their assents to the plan are solicited. By specific provision of the bill the report of the Commission is made advisory only. Thus assurance is given that the primary responsibility of the court for the fairness and feasibility of plans remains unaffected and that there will be no sharing of jurisdiction with an administrative agency. The Commission's function in effect is to act as an administrative arm of the court.

It is a source of considerable satisfaction to the Commission that these provisions have met with practically unanimous approbation. Particularly gratifying have been the statements of a number of federal judges welcoming this participation by the Commission and stating that it will fulfill a long-felt need.

It is believed that the Commission will be able to furnish the courts with expert advice and assistance in the solution of the complex problems inherent in these large reorganizations. Its facilities, as a qualified administrative agency, will be made available to the courts as an aid in the analysis of the fairness, equity and soundness of plans. This is rendered desirable by reason of the burden on the courts in these cases and of the complicated financial and business nature of the matters

involved. The reports sent to investors should provide further assurance that in corporate reorganization proceedings under the Chandler Bill acceptances under the plan will be made on the basis of comprehensive and accurate information. It is pertinent to observe that the Commission now is charged with the duty of preparing reports on reorganization plans of registered holding companies or their subsidiaries under section 11(g) of the Public Utility Holding Company Act.

The provisions of the Chandler Bill concerning trading in securities by those occupying a fiduciary position in the reorganization deserve brief comment. The bill provides that the judge shall deny compensation for services to any person acting in a representative or fiduciary capacity if he has purchased, acquired or transferred any claims or shares of stock after the commencement of the proceeding. This salutary measure should go far to discourage protective committeemen and other fiduciaries from buying or selling the debtor's securities on the basis of their inside information concerning its condition and prospects. This amendment cannot be regarded as novel or extreme; it merely codifies the enlightened judicial viewpoint expressed in a few 77B cases where the issue has been presented.

Time will not permit me to discuss many other salutary changes embodied in Chapter X. I can but mention a few of them by passing reference. There are the provisions intended to divert the small unimportant cases where there is no real investor interest to the proceedings under the bill adaptable to this type of case -- that is, Chapter XI, dealing with arrangements. Then there is the elimination of the provision which permits the petition to be filed with the court whose territorial jurisdiction includes the state of incorporation. In restricting the venue of the proceedings to the court where the principal place of business or principal assets of the corporation are located, Chapter X insures that the

proceedings will be conducted at a place which probably will be more convenient to creditors and stockholders. Furthermore it is deemed unwise to allow too large latitude as to the place of filing the petition, as inevitably the tendency is to choose the jurisdiction deemed most favorable from the viewpoint of the reorganizers. Also of significance are the provisions permitting any stockholder or creditor to be heard on all matters arising in the proceeding. They are now limited to the question of the permanent appointment of the trustee and the proposed confirmation of a plan, unless formal intervention is granted. No persuasive reasons appear why the real owners of the enterprise should be restricted in this manner. Of like importance are the steps taken to enlarge the functions of the indenture trustees and enable them to take active roles in proceedings. Under section 77B as it now stands, there is considerable doubt as to whether an indenture trustee has a right to be heard, even on the questions of the appointment of a permanent trustee or the confirmation of a plan. Intervention has been denied on indenture trustee to contest the jurisdiction of the court and to defeat the petition. It even has been doubted whether the indenture trustee has the right to file a "global" proof of claim on behalf of bondholders who fail to file individual proofs, at least where the power to do so could not be spelled out from the trust indenture itself. As a result, the indenture trustee has had a very limited opportunity to take a really effective part in proceedings under that section. These defects the Chandler Bill corrects. The indenture trustee is expressly authorized to file a petition, or an answer controverting a petition filed by others, and to file proofs of claim for all securities under the indenture. In addition the indenture trustee is entitled to be heard on all matters arising in the case. These provisions give the indenture trustee a status in the proceedings which is now uncertain under 77B; they clothe it with clear authority to act for the protection of holders of securities issued under its indenture.

It is in the manner that I have described, and in many other ways, that Chapter X of the Chandler Bill seeks to modernize and improve the existing reorganization processes and to correct the defects and shortcomings of 77B. Its principal purposes are to vitalize the role of the court by implementing its present powers, by furnishing it, wherever desirable, with specific standards for its guidance, and by seeking to bring within the judicial processes those important phases of reorganization now beyond the court's jurisdiction. Its ultimate objectives are to promote sound and economical administration of corporate enterprises while under the aegis of the court and to furnish assurance that reorganizations will be conducted solely in the interests of investors.