

FOR RELEASE UPON DELIVERY OF THE SPEECH

"INDENTURE TRUSTEES AND REAL ESTATE REORGANIZATIONS"

ADDRESS

of

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INDENTURE TRUSTEES AND  
REAL ESTATE REORGANIZATIONS

The topic which has been assigned to me for discussion is the role of the indenture trustee in real estate reorganizations. Adequate treatment of this subject requires not only an examination of the part which has been played by the indenture trustee in real estate reorganizations in the past, but also a consideration of possible improvements in the present practice. In the latter connection it will be, I believe, worth our while to devote some study to the provisions of the proposed Trust Indenture Act of 1937 (S. 2344), commonly known as the Barkley Bill. As you probably know, that bill is the outgrowth of the studies of the Securities and Exchange Commission in this field. It is part of an integrated program including the reorganization sections of the Chandler Bill (H.R. 8046), which provide for a substantial revision of the present section 77B, and also the Lea Bill (H.R. 6968), the proposed Committee Act of 1937. Public hearings on the Barkley Bill before a subcommittee of the Senate Committee on Banking and Currency have been concluded.

I.

Our memories are not so short but that the mere mention of the subject of real estate reorganizations inevitably brings to mind the disastrous collapse in real estate securities which occurred in the late 20's and early 30's. As a native of New York, I find myself thinking, almost automatically, of several houses of issue which figured prominently in that collapse. To those of you who come from other sections of the country, other names may more readily occur. The general problem, in all its various aspects, has been much investigated and much discussed. It was the subject of a study by the Securities and Exchange Commission, as well as of an investigation by a Select Committee of the House of Representatives. In the real estate field,

the Commission's study was restricted to defaulted issues sold by seven underwriting houses. But the defaulted issues sold by these houses aggregated over \$700,000,000 out of an estimated total of three billion odd dollars of real estate bonds in default, so it can be said that the issues studied constituted an adequate sample.

I do not propose to burden you with tiresome case histories. Many such are set forth in Parts III and VI of the report of the Commission's Protective Committee Study. You are all undoubtedly as familiar as I with the details of these cases, or of others like them. But a brief exposition of the conditions found generally to exist in the cases studied is essential in order to provide the necessary background for our discussion of the role of the indenture trustee in real estate reorganizations.

We found indenture trustees winking at the bland disregard of restrictions upon the issuance of the bonds and upon the application of their proceeds, or taking on faith the unsupported statement of officers of the issuer or the underwriting house that such provisions had been complied with.

We found many instances of the concealment or unauthorized waiver of defaults--defaults in sinking fund payments, in the payment of taxes and insurance premiums, and even in the payment of interest and principal--resulting in a failure to impound rents and profits for the benefit of the bondholders.

We found that no provision was made for the communication to the bondholders of current--and truthful--information as to the financial condition of the issuer and the performance of its obligations; no machinery established which would enable the bondholders to get in touch with their fellow bondholders for the purpose of demanding action by the trustee. Lists of bondholders were regarded, and are still regarded, as the exclusive property of issuers and underwriting houses.

We found houses of issue making use of these lists, and of inside information which they were careful not to disclose, to assist them in the organization of protective committees which, having succeeded in capturing the bondholders, proceeded to smother fraud and rescission claims against the issuing houses which controlled them, and to bargain with these issuing houses for the settlement of competing claims or equities which they had acquired.

Finally, we found indenture trustees cooperating with issuers and issuing houses to discourage or prevent the organization of independent committees until the insiders' committee had the situation well under control.

I take no pleasure in this recital. But a thorough knowledge of what has gone before is necessary if we are to make an intelligent attempt to build for the future.

The studies of the Commission and others in this field clearly show, I believe, that our present forms of trust indenture, our present reorganization procedures, are not designed to afford a maximum--or perhaps even a minimum--of protection to investors. More particularly they show the inability of the individual investor to take effective action for the protection of his interests, and the unwisdom of entrusting his interests to a self constituted protective committee which knows no higher authority than its own conscience. It is true that a collapse in the real estate field was probably inevitable. But the intensity of that collapse, and its disastrous effects on investors throughout the country, were undoubtedly heightened by the factors I have just mentioned. And the extent of the loss was affected in no small degree by the inadequacy of the provisions of the trust indentures, and the corrosive effect of conflicting interests upon the enforcement activities of the indenture trustees.

There seems to be a tendency, outside the real estate section of the securities business, to adopt a "holier than thou" attitude; to maintain

that any regulatory measures should be restricted in their operation to real estate reorganizations, to real estate securities and to the trust indentures securing them. It is true, I suppose, that the "vest pocket" trustee was a phenomenon somewhat peculiar to real estate issues. It is only in that field that we find officers of the issuer or of the houses of issue acting as indenture trustees. But the numbing influence of conflicting interests upon the activities of indenture trustees has made itself felt in the case of industrial and public utility issues as well. And the Commission's study of the general subject clearly shows that the deficiencies found to exist in trust indentures are common to indentures of all types.

#### *Analysis of Typical Trust Indenture*

A surprising number of the indentures examined made no provision whatsoever for the filing of periodic reports by the issuer with the trustee. None required the transmission of copies of such reports to the bondholders, although under some indentures the bondholders -- who might be in San Francisco -- were given the right to inspect such reports at the office of the trustee -- in New York!

None of these indentures provided for the preservation of information as to the names and addresses of the bondholders, derived from ownership certificates filed under the Revenue Act or otherwise, or for making such information, or even the use thereof, available to the bondholders.

Many of these indentures contained provisions authorizing the trustee conclusively to rely upon certificates of the issuer or its officers as to the performance by the issuer of its obligations under the indenture, as to recording, application of proceeds, conditions precedent to the issuance of additional bonds, releases and substitutions, and other matters of vital concern to the bondholders, -- this even in cases where ordinary prudence would require insistence upon a supporting certificate by some independent person.

Provisions of this sort promise investors a measure of protection which may well turn out to be unreal, unless the trustee actually exercises the degree of vigilance which we have a right to expect from a conscientious, high-standing corporate trustee.

But one of the most striking deficiencies of the forms of trust indenture now in common use relates to the responsibilities of the trustee where a default under the indenture has occurred.

Broadly speaking, the difficulty is not so much a lack of power, but a lack of duty and responsibility. The trustee is generally given ample powers to bring suit, in its own name, to collect the principal of the bonds, and almost invariably it is expressly provided that the trustee is vested with the *exclusive* power to enforce the rights under the indenture against the mortgaged or pledged property.

But instances of trustees taking such action, unless they are forced to do so by bondholders, are not common. Almost all indentures have contained express provisions that despite the happening of specified defaults, the trustee was under no duty to take any action whatsoever, unless the holders of upwards of 20 percent in principal amount of the outstanding bonds made a demand upon the trustee. Further, in more than half of the indentures examined, even after the necessary demand had been made, the trustee retained the power to elect the remedy to be pursued, unless 50 percent or more of the bondholders joined in a request requiring the trustee to take a particular type of action. Finally, practically all indentures have expressly provided that, even after the required demand was made, the trustee was under no obligation to take any action which in its opinion was likely to involve it in expense or liability unless the security holders furnished it with indemnity.

Of course, demand by the bondholders is impossible unless they are aware of the default, and although the trustee ordinarily learns of a default before the bondholders do, in not a single one of these indentures was any obligation imposed upon the trustee to notify the bondholders of the default. This was true even of defaults with respect to such important matters as interest, sinking fund, insurance or taxes.

Further, even if a bondholder happens to have knowledge of the existence of a default, he cannot satisfy the percentage requirements unless he has the names and addresses of his fellow bondholders. Without such a list, he must resort to general advertising, which is both costly and ineffective. As we all know, the percentage of registered bonds is normally very small -- by far the larger percentage of bonds and notes are in bearer form and pass freely from hand to hand by delivery. The indenture trustee may voluntarily maintain a list of bondholders who have entered into correspondence with it, or the paying agent may voluntarily keep a record of the names and addresses of persons presenting their coupons for payment.

The most important source of information as to the names and addresses of security holders, however, is the ownership certificates which, under regulations issued by the Bureau of Internal Revenue, must be filed when interest coupons are presented for payment. But the usefulness of ownership certificates to individual bondholders as a source of information as to the names and addresses of their fellow bondholders is completely destroyed by the fact that the borrower's paying agent (ordinarily the trustee itself) commonly regards the ownership certificates as the property of the borrower. And the management is unlikely to authorize its paying agent to make these lists available to committees which do not have the favor and approval of the management. While access to the ownership certificates has been denied

to independent bondholders' groups, groups favored by the management and the company's bankers do not have much difficulty in gaining access to such lists. In other words, under the existing practice, the scales are heavily weighted in favor of the borrower -- who is obviously on the other side of the fence -- through its control of the best source of information as to the names and addresses of the bondholders.

To the foregoing obstacles to prompt and efficient action for the protection of the interests of the bondholders and the enforcement of their rights must be added the fact that almost all indentures contain provisions expressly exempting the trustee from liability except for its gross negligence or wilful misconduct. This is certainly an inadequate standard of conduct for an institution which permits itself to be described in selling literature and in the bonds themselves as a "trustee".

I do not mean to say that the more conscientious corporate trust institutions will not take, and have not in numerous instances taken, vigorous and effective action for the protection and enforcement of the rights of the bondholders, notwithstanding the fact that they could safely have refrained from taking such action. But too frequently trustees have insisted upon literal compliance with the conditions precedent to action established by the indenture, and it cannot be denied that indenture provisions of the sort referred to create a condition in which the trustee can safely fail to exercise its powers even where action is imperative.

#### *Necessity For Regulation*

Not only the Commission, but other students of the subject, including forward looking, progressive and responsible trust officers, have concluded that a new and different approach to this subject must be made. A special committee of the American Bankers Association has given the matter much



time and thought, and many of its suggestions have been incorporated in the third Committee Print of the Barkley Bill. There is a general appreciation of the fact that the basic problem of the more enlightened corporate trust institutions is to raise the standards of the entire profession to their own high level. This is the objective of the Barkley Bill.

A more proper balance between the interests of investors and requirements of issuers can be had only by enlarging the trustee's responsibilities in those cases where its failure to take swift and positive action leaves the investors without effective protection of their interests.

Upon whom can we rely to provide this additional measure of protection? Not upon the issuer; the issuer's interests obviously are adverse to those of the bondholders. Not upon the underwriter; the underwriter has been tried and found wanting. Admittedly he has a moral obligation to those who purchase securities from him and should discharge that obligation. But experience has demonstrated that it is inadvisable to entrust control of the reorganization process to one whose individual interests are so frequently in conflict with those of the security holders themselves. The only instrumentality remaining is the indenture trustee.

It is no answer to say that both historically and under the terms of trust indentures as now drafted the trustee is a "dry" trustee rather than an "active" trustee. The question is whether he should continue to be a mere stakeholder, a mere mechanical agency, and I think the answer is clear. I do not rely upon the fact that the indenture trustee bears that title, although, if indentures are to continue to be drafted in the future as they have been in the past, some other designation should certainly be devised. The necessity that more active duties be imposed upon the indenture trustee springs from the very same development that gave rise to the trust indenture

device itself, namely, the necessity and the desire on the part of rapidly expanding business organizations to tap sources of capital existing outside the locality in which they were operating.

If these objectives are to be achieved; if an effective check is to be established upon the performance by issuers of the obligations which they expressly assume; if bondholders are to be provided with complete, truthful and reasonably up-to-date information regarding the enterprise in which they have invested their funds; if machinery is to be established whereby bondholders may group together for the protection and enforcement of their interests; and if, above all, the indenture trustee is to be required to play a more active part in the proceedings after default; if these results are to be attained, the trust indenture itself must be reconditioned.

Again, we have the question of how this reconditioning is to be accomplished. The ultimate purchasers of the securities are certainly not in a position to take effective action in the matter. They are even more helpless than purchasers of insurance, for whose protection standard forms of policies have long been prescribed by statute. The provisions of insurance policies may have been in fine print, but at least they were there. In the case we are considering, vitally important provisions are to be found only in the indenture on file with the trustee, and are included in the bonds themselves only by general reference to the indenture. The indenture is ordinarily drafted before the securities are offered and the identity of the purchasers ascertained. The average layman does not even know what a trust indenture is, and even if he had an opportunity to express his views, would certainly

have no idea what changes were necessary. The issuer can obviously not be expected to bring about the essential reforms. His interests and those of the bondholders are largely incompatible in this regard. The underwriter has long been in the most favorable position to insist upon the correction of inadequacies in trust indentures. But the record shows that no substantial progress has been made. Underwriters, though admittedly performing at times a protective function, have too frequently been interested in acceding to the wishes of the issuer and in insuring to themselves control over possible future reorganizations through imposing limitations and restrictions upon the bondholders' right of individual action. Their laxity is subject to no effective check, for in the event of a smash, the bondholder is unlikely to attribute his losses, or his difficulties in the enforcement of his rights, to inadequacies in the trust indenture itself. Nor can the individual trust institution exert much influence in the direction of improving the provisions of trust indentures. As a matter of fact, our studies show that the trustee had no participation whatever in the drafting of more than half of the trust indentures examined and in the remainder it is not unlikely that the trustee's principal concern was with the provisions relating to its own protection. It is obviously impossible to secure unanimity among the many trust institutions as to the provisions which should be included in trust indentures, although, as I have said, considerable progress has already been made in this direction by a committee of the trust institutions themselves. There will always be a number of dissenters, and the keenness of competition will militate against the complete accomplishment of the necessary reforms.

The only answer, it seems to me, is to be found in uniform regulation of the drafting process by some governmental agency. This is what the Barkley Bill proposes to do.

II

*The Barkley Bill*

The Barkley Bill requires that all future trust indentures comply with certain minimum requirements, particularly as to the responsibilities to be imposed upon the trustee, and restrictions upon the possession by the trustee of interests conflicting with those of the bondholders. This result is to be accomplished by establishing statutory standards, and by adding to the drafting table the Securities and Exchange Commission, representing the public interest and the interest of investors, to see that those standards are complied with. The Commission's job is over when the form of indenture has been qualified. After the indenture is executed it is enforceable only like any other contract, the Commission having no powers with respect to enforcement.

The bill rests on the same constitutional basis as the Securities Act of 1933. It applies only to public offerings, by issuers or underwriters, of notes, bonds, debentures, or evidences of indebtedness, or certificates of interest or participation therein. Provision is made for exemption, by rule and regulation, where the aggregate offering price of the securities does not exceed \$250,000.

Unlike the Securities Act, of course, the bill goes further than the mere requirement of disclosure. In effect, it prohibits the use of the mails or instrumentalities of interstate commerce to offer securities which do not conform to the minimum standards prescribed by the bill. These standards in no wise affect what may be called the business features of the deal between the issuer, the underwriter, and the trustee. The Commission has no jurisdiction over offering price, maturity, interest rate, sinking fund provisions and the like. The Commission's only function is to see that the

indenture contains adequate provisions for the protection and enforcement of the rights of the investors; that the provisions which purport to afford a measure of protection to the investors actually give that degree of protection.

I shall not be able, in the time remaining, to discuss with you in detail all of the provisions of the Barkley Bill. I should like therefore to concentrate upon what seem to me to be its principal features.

#### *Periodic Reports by Issuer*

In the first place the indenture must make adequate provision for periodic financial reports by the issuer to the trustee and the Commission, and adequate provision for the transmission thereof to the bondholders. The Commission is empowered to prescribe the form in which such reports are to be made. This is the only provision which gives the Commission continuing jurisdiction after an indenture has been qualified, and is analogous to the provision of Section 15(d) of the Securities Exchange Act of 1934 which requires issuers registering securities under the Securities Act to file similar periodic reports with the Commission.

#### *Bondholders' Lists*

The issuer must also be required to file with the trustee at stated intervals all information in its possession or control, or in the possession or control of any of its paying agents, as to the names and addresses of the bondholders. This requirement at once provides machinery for the transmission to the security holders of the periodic reports to which I have just referred, and a means by which security holders may get together for the protection of their common interests. Such information derived from ownership certificates or otherwise, would have to be turned over to the trustee, and the trustee would be required to make such information, or the use thereof, available to the bondholders. The Commission would be permitted to

approve a provision which, in lieu of requiring disclosure of the list itself, merely required the trustee to mail out, at the expense of any bondholder, communications directed to his fellow bondholders. The danger that the list would be misused by sell and switch artists would thus be reduced to a minimum.

#### *Functions of Trustee Before Default*

Provision is also made for the improvement of the provisions of the indenture with respect to the functions of the trustee before the occurrence of a default. It is neither necessary nor advisable to impose upon a trustee, in general terms, the duty to exercise reasonable care during this period. Such a requirement might very well lead an overscrupulous trustee to conduct which might properly be classed as interference with the management of the business. What the bill requires is that the indenture impose upon the trustee certain specific duties and obligations, prior to default, which are to be worked out against the background of what a prudent man would do under similar circumstances. Specific mention is made of certain of the more important matters, such as recording; the application of the proceeds of the securities to the purposes specified in the indenture; compliance with conditions precedent to the issuance of additional bonds or to the release and substitution of the mortgaged property; and the performance by the obligor of its obligations under the indenture. In some cases, a requirement that the obligor furnish a certificate signed by its own officers would unquestionably comply with this standard. In others, an opinion or certificate signed by an independent attorney or other expert might well be required. In some cases the trustee might conceivably be required to make its own investigation of the facts. In any event, all these provisions would be worked out in advance, before the indenture was qualified, against the standard prescribed in the bill.

*Functions of Trustee After Default*

Thus far I have not touched upon a matter in which, I assume, you are particularly interested -- the provisions of the bill with respect to the functions of the trustee in the event of default.

First, the indenture must contain adequate provisions with respect to the giving to bondholders of notice of defaults under the indenture. But the indenture may provide that, except in the case of defaults as to which the Commission deems it necessary that prompt notice be given, the trustee shall be protected in withholding notice so long as it determines that course to be in the interests of the bondholders. Such determination must be made in good faith by responsible officers of the trustee.

Second, the trustee must act as a prudent man would act under the circumstances if he were a fiduciary and had the same degree of skill as the indenture trustee. If the trustee has a greater degree of skill than a man of ordinary prudence, it is held to the exercise of that degree of skill. This requirement merely imposes upon an indenture trustee the same standard generally applicable to trustees under personal trusts. If at the time the securities were offered, the trustee made misrepresentations as to its qualifications, it is, of course, bound by such misrepresentations.

In that critical period which follows the occurrence of a default and precedes the organization of the bondholders in their interests, therefore, the trustee will in effect be required to take such action for their protection as it would take if its own investment were at stake. By and large, as we have seen, the powers customarily granted to indenture trustees are adequate for this purpose. The only changes proposed are the imposition upon the trustee of the obligation of exercising the powers which it now has, and the elimination of the soporific influence of exculpatory clauses relieving the trustee of responsibility even for its own negligence.

This does not mean that the trustee will be exposed to a multitude of strike suits based upon alleged errors of judgment. The bill expressly permits provisions protecting the trustee from liability for losses arising from errors of judgment, if it was not negligent in ascertaining the pertinent facts, and if the judgment was made in good faith by responsible officers of the trustee. And the bill also expressly authorizes the inclusion in the indenture of provisions requiring the filing in any such suit of an undertaking for costs, and the assessment of reasonable costs (including reasonable attorneys' fees), in the discretion of the court, unless the holders of more than 10% in principal amount of the outstanding bonds join in the proceeding.

Nor does the enlargement of the responsibilities of the trustee mean that the bondholders will be deprived of control of their own destinies. The bill expressly permits the retention of the customary provisions authorizing the holders of a majority in principal amount of the bonds to direct the trustee's action, and protecting the trustee from liability in respect of any action taken in good faith in accordance with such direction.

#### *Prohibition of Conflicting Interests*

One more point and I will have finished my outline of the Barkley Bill. I made earlier mention of the matter of conflicting interests. The possession by an indenture trustee of interests which materially conflict with those of the bondholders is objectionable enough even where the trustee is a mere mechanical, clerical agency, -- and it is little more than that under the terms of the typical modern trust indenture. But the elimination of such conflicting interests is an absolute prerequisite to any legislative or contractual mandate for active trusteeship, so that the trustee will be in a position to exercise an independent, unbiased judgment and vigorously to discharge its responsibilities.



I shall not have time to do much more than outline the principles on which the provisions of the bill are based. Under the bill indentures must contain provisions requiring any trustee who has a conflicting interest, as defined in the bill, either to resign its trusteeship or to eliminate the conflict, within ninety days after it becomes aware that it exists. What interests come within this ban?

It would be generally agreed, I suppose, that ordinarily the same institution should not act as trustee under more than one indenture of the same issuer. The New York Stock Exchange recently announced the inclusion of this principle in its listing requirements. In the real estate field, however, no real conflict exists where the indentures are secured by wholly separate and distinct parcels of real estate, and the issuer has no substantial unmortgaged assets, and the bill provides an exception in this situation.

It would also be agreed, I am sure, that the trustee should not be a director, officer, or employee of the issuer; that no person should at the same time be an executive officer of the trustee and the issuer; that an institution should not act as trustee if it is controlled by the issuer, or if its ability to exercise a free and independent judgment is impaired by too numerous interlockings of directors, or by too extensive ownership of its voting securities by the issuer and its officials. All of these relationships are barred by the Barkley Bill. Many of them are now prohibited by the listing requirements of the leading securities exchanges.

The proscription of affiliations with underwriters is what seems to me a logical extension, to the corporate trust field, of the principles of the Banking Act of 1933. In the case of trust institutions which are national banks, investment banking affiliations are already largely prohibited by that Act. The

provisions of the Barkley Bill, applying as they do only to investment bankers who have recently underwritten securities of the particular issuer in question, rest upon an even firmer factual foundation than the general prohibition contained in the Banking Act of 1933.

Finally, restrictions are placed upon the ownership by the indenture trustee of substantial amounts of other securities of the issuer, so that the trustee will not find itself in a position where the performance of its duty to its depositors and stockholders might conflict with its duty to the bondholders for whom it is acting as trustee.

I have not thought it necessary to discuss with you the so-called "loan conflict" provision of the bill, for the reason that it would rarely, if ever, apply to an issue of real estate bonds. Its applicability is restricted to unsecured issues, or issues having a maturity of less than five years.

### III

#### NEW ROLE OF INDENTURE TRUSTEE

What role, then, will the indenture trustee be called upon to play in the administration of real estate mortgages and in real estate reorganizations, if the Barkley Bill and its companion measure, the Chandler Bill, are enacted into law?

In the first place, of course, the trustee will no longer be a "vest-pocket" trustee, a vassal of the issuer or underwriter. It will be a corporate trust institution which owes allegiance to no one but the bondholders whom it is supposed to represent. The restrictions upon the possession of materially conflicting interests assure that.

Secondly, the indenture will provide the trustee with the necessary tools for making an effective check on the actual performance of the agreements and restrictions avowedly inserted in the indenture for the investors' protection. In the case of construction mortgages, for example, the indenture will ordinarily require that the proceeds of the bonds be deposited with the trustee, to be disbursed by it as construction progresses. In proper cases, certificates of an independent architect or engineer will be a condition precedent to such disbursement. The bondholders will thus have some real assurance that they will actually receive the security for which they bargained, that their mortgage will cover an apartment house or an office building and not a hole in the ground. In proper cases, also, the indenture will require opinions or certificates of independent attorneys or other experts as to compliance with the conditions precedent to the issuance of additional bonds or to the release or substitution of the mortgaged property, before the trustee authenticates such bonds or consents to such release or substitution.

Again, the issuer will be required by the indenture to file with the trustee periodic reports of its operations and its financial condition, and information as to the performance by it of its obligations under the indenture. The issuer will be required to transmit copies of such reports and information to the bondholders themselves, whose names and addresses the trustee will have on file. In this way, the indenture will insure, so far as possible, that the trustee and the bondholders themselves will have reasonably current information as to the condition of the bondholders' investment.

When a serious default occurs, the trustee will be under a duty to give prompt notice to the bondholders. If the default is of a less serious nature, the trustee may withhold such notice if its responsible officers deem that course to be in the interests of the bondholders. In any event,

however, the trustee will be charged with the duty of defending their interests as its own until the bondholders have had an opportunity to organize and take over the task. The situation may be such as to make it advisable to enter into possession of the mortgaged property, or to procure the appointment of a receiver of the rents and profits. Indenture trustees commonly have those powers under the forms of trust indenture now in general use. The new form of trust indenture would require the trustee to exercise those powers, when ordinary prudence dictates. In some cases the proper course might be to institute reorganization proceedings under what is now section 77B of the Bankruptcy Act. Instead of having to wait until the necessary percentage of the bondholders could be assembled to institute involuntary proceedings, or until the issuer itself could be persuaded voluntarily to take the step, the indenture trustee would be in a position, under the Chandler Bill, to file a petition in its own right.

When we come to the matter of organizing the bondholders for concerted action, we find that insider control of the formation of protective committees will have been effectively broken; the issuer's and underwriter's present monopoly over bondholders lists destroyed. Individual security holders will be in a position to get in touch with their fellows through the medium of the indenture trustee. In fact, the indenture trustee's own self-interest will impel it to take a lead in the formation of protective committees. The center of gravity in real estate reorganizations will have been shifted from the side of the houses of issue and the issuer to the side of the bondholders themselves, represented by a disinterested, active indenture trustee.

This emphasis upon the enlarged functions of the indenture trustee is preserved by the reorganization provisions of the Chandler Bill, which, as I have said, provide for a substantial revision of the present section 77B. We have seen that the indenture trustee is authorized to file a petition. It may file an answer controverting the allegations of a petition filed by any one else. It is entitled to be heard on all matters, and must be given notice of all important steps in the proceedings, including hearings upon the approval or dismissal of the petition upon the approval and confirmation of the plan, and upon applications for compensation and allowances out of the estate.

It is expressly authorized to file proofs of claim for all holders of securities issued under the indenture under which it is acting. And it may be allowed reasonable compensation for services rendered and reimbursement for expenses incurred in connection with the administration of the estate or in connection with a plan approved by the court.

Far from interfering with the liberty of the investor, the Barkley Bill will insure to him a greater freedom, a freedom which he has never had before. It will enable him to take effective action for the protection of his own rights, without interference from those who have had a strangle hold on the reorganization process in the past. It will provide him with a vigilant, active, loyal guardian of his interests, in the person of the indenture trustee. And it will open to the trust institutions themselves new and greater opportunities for public service.