

the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2625.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 950 of the Senate amendment as unnecessary. The constitutionality of chapter 9 of the House amendment is beyond doubt.

SENATE REPORT NO. 95-989

[Section 949] This section [enacted as section 946], which follows section 97 of current law [section 417 of former title 11], permits an exchange of a security before the case is filed to constitute an acceptance of the plan if the exchange was under a proposal that later becomes the plan.

CHAPTER 11—REORGANIZATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

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| Sec. | |
| 1101. | Definitions for this chapter. |
| 1102. | Creditors' and equity security holders' committees. |
| 1103. | Powers and duties of committees. |
| 1104. | Appointment of trustee or examiner. |
| 1105. | Termination of trustee's appointment. |
| 1106. | Duties of trustee and examiner. |
| 1107. | Rights, powers, and duties of debtor in possession. |
| 1108. | Authorization to operate business. |
| 1109. | Right to be heard. |
| 1110. | Aircraft equipment and vessels. |
| 1111. | Claims and interests. |
| 1112. | Conversion or dismissal. |
| 1113. | Rejection of collective bargaining agreements. |
| 1114. | Payment of insurance benefits to retired employees. |
| 1115. | Property of the estate. |
| 1116. | Duties of trustee or debtor in possession in small business cases. |

SUBCHAPTER II—THE PLAN

- | | |
|-------|---|
| 1121. | Who may file a plan. |
| 1122. | Classification of claims or interests. |
| 1123. | Contents of plan. |
| 1124. | Impairment of claims or interests. |
| 1125. | Postpetition disclosure and solicitation. |
| 1126. | Acceptance of plan. |
| 1127. | Modification of plan. |
| 1128. | Confirmation hearing. |
| 1129. | Confirmation of plan. |

SUBCHAPTER III—POSTCONFIRMATION MATTERS

- | | |
|-------|---|
| 1141. | Effect of confirmation. |
| 1142. | Implementation of plan. |
| 1143. | Distribution. |
| 1144. | Revocation of an order of confirmation. |
| 1145. | Exemption from securities laws. |
| 1146. | Special tax provisions. |

SUBCHAPTER IV—RAILROAD REORGANIZATION

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|-------|--|
| 1161. | Inapplicability of other sections. |
| 1162. | Definition. |
| 1163. | Appointment of trustee. |
| 1164. | Right to be heard. |
| 1165. | Protection of the public interest. |
| 1166. | Effect of subtitle IV of title 49 and of Federal, State, or local regulations. |
| 1167. | Collective bargaining agreements. |

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|-------|--|
| Sec. | |
| 1168. | Rolling stock equipment. |
| 1169. | Effect of rejection of lease of railroad line. |
| 1170. | Abandonment of railroad line. |
| 1171. | Priority claims. |
| 1172. | Contents of plan. |
| 1173. | Confirmation of plan. |
| 1174. | Liquidation. |

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law [chapter 10 of former title 11] or any other chapter of the Bankruptcy Act [former title 11]. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapters VIII, X, XI, and XII of the Bankruptcy Act [chapters 8, 10, 11, and 12 of former title 11]. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing creditors or equity security holders to raise and appear and be heard on any issue in a case under chapter 11. This will enable the bankruptcy court to evaluate all sides of a position and to determine the public interest. This approach is sharply contrasted to that under chapter X of present law in which the public interest is often determined only in terms of the interest of public security holders. The advisory role of the Securities and Exchange Commission will enable the court to balance the needs of public security holders against equally important public needs relating to the economy, such as employment and production, and other factors such as the public health and safety of the people or protection of the national interest. In this context, the new chapter 11 deletes archaic rules contained in certain chapters of present law such as the requirement of an approval hearing and the prohibition of prepetition solicitation. Such requirements were written in an age before the enactment of the Trust Indenture Act [15 U.S.C. 77aaa et seq.] and the development of securities laws had occurred. The benefits of these provisions have long been outlived but the detriment of the provisions served to frustrate and delay effective reorganization in those chapters of the Bankruptcy Act in which such provisions applied. Chapter 11 thus represents a much needed revision of reorganization laws. A brief discussion of the history of this important achievement is useful to an appreciation of the monumental reform embraced in chapter 11.

Under the existing Bankruptcy Act [former title 11] debtors seeking reorganization may choose among three reorganization chapters, chapter X, chapter XI, and chapter XII [chapters 10, 11, and 12 of former title 11]. Individuals and partnerships may file under chapter XI or, if they own property encumbered by mortgage liens, they may file under chapter XII. A corporation may file under either chapter X or chapter XI, but is ineligible to file under chapter XII. Chapter X was designed to facilitate the pervasive reorganization of corporations whose creditors include holders of publicly