Subsection (c) requires that the same disclosure statement go to all members of a particular class, but permits different disclosure to different classes.

Subsection (d) excepts the disclosure statements from the requirements of the securities laws (such as section 14 of the 1934 Act [15 U.S.C. 78n] and section 5 of the 1933 Act [15 U.S.C. 77e]), and from similar State securities laws (blue sky laws, for example). The subsection permits an agency or official whose duty is to administer or enforce such laws (such as the Securities and Exchange Commission or State Corporation Commissioners) to appear and be heard on the issue of whether a disclosure statement contains adequate information, but the agencies and officials are not granted the right of appeal from an adverse determination in any capacity. They may join in an appeal by a true party in interest, however.

Subsection (e) is a safe harbor provision, and is necessary to make the exemption provided by subsection (d) effective. Without it, a creditor that solicited an acceptance or rejection in reliance on the court's approval of a disclosure statement would be potentially liable under antifraud sections designed to enforce the very sections of the securities laws from which subsection (d) excuses compliance. The subsection protects only persons that solicit in good faith and in compliance with the applicable provisions of the reorganization chapter. It provides protection from legal liability as well as from equitable liability based on an injunctive action by the SEC or other agency or official.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–8, § 717, inserted ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records,'' and substituted ''such a hypothetical investor'' for ''a hypothetical reasonable investor typical of holders of claims or interests''.

Pub. L. 109–8, § 431(1), inserted before semicolon ''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''.

Subsec. (f). Pub. L. 109–8, § 431(2), added subsec. (f) and struck out former subsec. (f) which read as follows: ''Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

''(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

''(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.''

Subsec. (g). Pub. L. 109–8, § 408, added subsec. (g).

1994—Subsec. (f). Pub. L. 103–394 added subsec. (f).

1984—Subsec. (a)(1). Pub. L. 98–353, § 509(a)(1), inserted '', but adequate information need not include such information about any other possible or proposed plan''.

Subsec. (a)(2)(B). Pub. L. 98–353, § 509(a)(2), inserted ''the'' after ''with''.

Subsec. (a)(2)(C). Pub. L. 98–353, § 509(a)(3), inserted ''of'' after ''holders''.

Subsec. (d). Pub. L. 98–353, § 509(b), inserted ''required under subsection (b) of this section'' and '', or otherwise seek review of,''.

Subsec. (e). Pub. L. 98–353, § 509(c), inserted ''acceptance or rejection of a plan'' after ''solicits'', and ''solicitation of acceptance or rejection of a plan or'' after ''governing''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

§ 1126. Acceptance of plan

(a) The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan. If the United States is a creditor or equity security holder, the Secretary of the Treasury may accept or reject the plan on behalf of the United States.

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have

accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2634; Pub. L. 98–353, title III, § 510, July 10, 1984, 98 Stat. 386.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1126 of the House amendment deletes section 1126(e) as contained in the House bill. Section 105 of the bill constitutes sufficient power in the court to designate exclusion of a creditor's claim on the basis of a conflict of interest. Section 1126(f) of the House amendment adopts a provision contained in section 1127(f) of the Senate bill indicating that a class that is not impaired under a plan is deemed to have accepted a plan and solicitation of acceptances from such class is not required.

SENATE REPORT NO. 95–989

Subsection (a) of this section permits the holder of a claim or interest allowed under section 502 to accept or reject a proposed plan of reorganization. The subsection also incorporates a provision now found in section 199 of chapter X [section 599 of former title 11] that authorizes the Secretary of the Treasury to accept or reject a plan on behalf of the United States when the United States is a creditor or equity security holder.

Subsection (b) governs acceptances and rejections of plans obtained before commencement of a reorganization for a nonpublic company. Paragraph (3) expressly states that subsection (b) does not apply to a public company.

Prepetition solicitation is a common practice under chapter XI [chapter 11 of former title 11] today, and chapter IX [chapter 9 of former title 11] current makes explicit provision for it. Section 1126(b) counts a prepetition acceptance or rejection toward the required amounts and number of acceptances only if the solicitation of the acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. If there is not any such applicable law, rule, or regulation, then the acceptance or rejection is counted only if it was solicited after disclosure of adequate information, to the holder, as defined in section 1125(a)(1). This permits the court to ensure that the requirements of section 1125 are not avoided by prepetition solicitation.

Subsection (c) specifies the required amount and number of acceptances for a class of creditors. A class of creditors has accepted a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan. The amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X [chapter 10 of former title 11] on the basis of the allowed claims in the class. Subsection (f) excludes from all these calculations claims not voted in good faith, and claims procured or solicited not in good faith or not in accordance with the provisions of this title.

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so pre-empted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present Bankruptcy Act [former title 11] has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.], an exemption also continued by section 1145 of this title. The extension of the disclosure requirements to all chapter 11 cases is justified by the integration of the separate chapters into the single chapter 11. By the same token, no valid purpose is served by failing to provide exemption from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Under subsection (d), with respect to a class of equity securities, it is sufficient for acceptance of the plan if the amount of securities voting for the plan is at least two-thirds of the total actually voted.

Subsection (e) provides that no acceptances are required from any class whose claims or interests are unimpaired under the plan or in the order confirming the plan.

Subsection (g) provides that any class denied participation under the plan is conclusively deemed to have rejected the plan. There is obviously no need to submit a plan for a vote by a class that is to receive nothing. But under subsection (g) the excluded class is like a class that has not accepted, and is a dissenting class for purposes of confirmation under section 1130.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–353, § 510(a), substituted ''1125(a)'' for ''1125(a)(1)''.

Subsec. (d). Pub. L. 98–353, § 510(b), inserted a comma after ''such interests''.

Subsec. (f). Pub. L. 98–353, § 510(c), substituted '', and each holder of a claim or interest of such class, are conclusively presumed'' for ''is deemed'', ''solicitation'' for ''solicititation'', and ''interests'' for ''interest''.

Subsec. (g). Pub. L. 98–353, § 510(d), substituted ''receive or retain any property'' for ''any payment or compensation''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

§ 1127. Modification of plan

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the