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REORGANIZATIONS UNDER SECTION 11(g) OF THE PUBLIC UTILITY HOLDING COMPANY ACT

THE Public Utility Holding Company Act[1] was passed by Congress in 1935 to provide protection for investors in public utilities and their subsidiaries.[2] Appreciating the fact that danger to this group lay more perhaps in the readjustment of already existing rights than in the creation of new rights by security flotations, Congress subjected the process of public utility

This Comment is based exclusively upon information derived from the published releases of the SEC up to and including Holding Company Act Release No. 1749, October 11, 1939. Nothing herein may properly be taken as an expression of opinion of the Commission or any of its officials.

1. 49 STAT. 803 (1935), 15 U. S. C. § 79 (Supp. 1938).

2. A good discussion of how closely the SEC has fulfilled this purpose in their first three years of administration is contained in Meck and Cary, *Regulation of Corporate Finance and Management under the Public Utility Holding Company Act of 1935* (1938) 52 HARV. L. REV. 216. For the need for such regulation, see Dodd, *Amending the Securities Act—American Bar Association Committee's Proposals* (1935) 45 YALE L. J. 199.

reorganization to a separate and stringent control.[3] The Act makes approval by the Securities and Exchange Commission a condition precedent to the issue of new securities or to changes in the investors' existing rights.[4] If such proposals are not made in connection with a "reorganization plan," Section 12(e) requires that a solicitation of consents be preceded or accompanied by the proponent's statement concerning the purpose of the intended issue or change.[5] Where the project touches the reorganization of a registered holding company or subsidiary, however, Section 11(g) stipulates that the plan must be accompanied by a Commission report, rather than a statement by the proponents.[6] This section further declares that a solicitation for proxies, consents, authorizations, or dissents for a "reorganization plan" is itself unlawful, unless the proposal has been suggested by the Commission or submitted to it by a person having a bona fide interest in the reorganization.[7]

Since the Commission report is required only for "plans of reorganization," the Commission cannot demand compliance with Section 11(g) until it finds that the proposed adjustment is, in fact, a reorganization. Treatises and texts can provide little assistance in this determination, for the writers have been unable to agree upon a definition. Depending upon the source chosen, authority can be found for describing a reorganization as any adjustment of either the corporation's financial structure or the control provided the various

3. With few exceptions, no state or federal machinery provided for a hearing on the fairness and equity of a voluntary reorganization plan until the Holding Company Act was enacted. This protection is still unavailable to shareholders of a company not within the Act. See Comment (1939) 33 ILL. L. REV. 914, 932; (1939) 52 HARV. L. REV. 1331, 1334. The Chandler Act has increased the powers of both the courts and the SEC over involuntary reorganization plans. Legis. (1934) 34 COL. L. REV. 1348; Dodd, *The Securities and Exchange Commission Reform Program for Bankruptcy Reorganizations* (1938) 38 COL. L. REV. 223; Weiner, *The Securities and Exchange Commission and Corporate Reorganization* (1938) 38 COL. L. REV. 280; Clark, *The Securities and Exchange Commission and the Chandler Act* (1939) 73 U. S. L. REV. 147.

4. 49 STAT. 815 (1935), 15 U. S. C. §79(g) (Supp. 1938); see (1937) 46 YALE L. J. 1058 for the administration of this provision.

5. Under the authority granted by Section 12(e), the SEC has incorporated into this section all the rules and regulations governing solicitations which were formulated under Section 14(a) of the Securities and Exchange Act. SEC Holding Company Act Release No. 759 (1937).

6. Section 11(g) is applicable to solicitations, proxies, etc. in respect of a reorganization or dissolution plan of a registered holding company or subsidiary, only when the solicitation is made by use of the mails or any means or instrumentality of interstate commerce. Campaigns by personal contacts, house to house canvass, and possibly intrastate commerce are permissible without compliance.

7. The proposal must be accompanied by adequate information regarding it and its sponsors. This information is then conveyed to the security holders in the report on the plan by the Commission. Under the authority granted by Section 11(g) the Commission has promulgated a set of rules governing the form and content of the solicitations and the applications for Commission reports. Rules 12E-3 to 6, SEC Holding Company Act Release No. 759 (1937).

security classes.[8] In its narrowest construction, a reorganization has been defined as the adjustments of a corporation's financial structure necessitated by threatened or actual insolvency.[9] Nor can previous judicial interpretations of the scope of reorganization within the meaning of tax or bankruptcy statutes provide "binding" precedent for deciding the ambit of regulation by Section 11(g) for this section serves a function entirely distinct from that contemplated by tax and bankruptcy statutes. The definition set forth in the Revenue Acts[10] has significance only with the realization that its limited range was designed to prevent tax evasion, since gains from reorganizations, as there used, are tax-exempt.[11] In this context, a reorganization must contain an element of change of control or the process must resemble a merger or consolidation. Chapter X of the Chandler Act,[12] on the other hand, is concerned mainly with affording relief to corporate debtors without unduly jeopardizing the claims of creditors.[13] Section 216[14] therefore requires that a reorganization shall include a modification or alteration of creditors' rights. The purpose of Section 11(g), however, was to acquaint security holders with the facts of suggested changes in order that they might intelligently exercise their right to assent to or dissent from the proposal.[15] It is apparent that Congress did not intend the provision to be restricted to changes in control or in creditors' rights. Rather, it left reorganization undefined so that the Commission could later mark out within the legal limits the most practical area of definition.

Since the concern of Section 11(g) is the dissemination of solicitations, no problems relating to the application of this section arise if the reorganization may be consummated without the solicitation of consents. Its requirements may be ignored, therefore, where the transaction does not necessitate the vote of any class of security holders despite resultant changes in their

8. *Cf.*, for example, Johnson v. Bradley Knitting Co., 229 Wisc. 566, 280 N. W. 688 (1938); Utility Investing Corp. v. Stuart, 11 F. Supp. 391 (E. D. Pa. 1934), *aff'd*, 78 F. (2d) 279 (C. C. A. 3d, 1935); Mowry v. Farmers' Loan and Trust Co., 76 Fed. 38 (C. C. A. 7th, 1896).

9. See BOUVIER, LAW DICTIONARY; CRAVATH, SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION AND REGULATION (Stetson ed. 1917) 154; DEWING, FINANCIAL POLICY OF CORPORATIONS (3d rev. ed. 1934) 1083.

10. 49 STAT. 1678 (1936), *reenacted*, 52 STAT. 485, 26 U. S. C. § 112(g)(1) (Supp. 1938), as amended by Pub. L. No. 1, 76th Cong., 1st Sess. (Feb. 10, 1939).

11. See Comment (1935) 45 YALE L. J. 134.

12. 52 STAT. 883–905, 11 U. S. C. §§ 501–676 (Supp. 1938).

13. See Rostow and Cutler, *Competing Systems of Corporate Reorganization: Chapters X and XI of the Bankruptcy Act* (1939) 48 YALE L. J. 1334.

14. 52 STAT. 895, 11 U. S. C. § 616 (Supp. 1938).

15. SEN. REP. No. 613, 74th Cong., 1st Sess. (1935) 34; see Utilities Elkhorn Coal Co., SEC Holding Company Act Release No. 1200 (1938) 5; Meek and Cary, *Regulation of Corporate Finance and Management under the Public Utility Holding Company Act of 1935* (1938) 52 HARV. L. REV. 216, 242; *cf.* SECURITIES AND EXCHANGE COMMISSION, SECOND ANNUAL REPORT (1936) 19.

control or rights.[16] Since charter provisions usually authorize purchases and sales of assets or securities of operating companies without the express vote of the holding company's shareholders, such dealings would require no Commission report.[17] Similarly, mergers and recapitalizations of subsidiary companies may be effectuated without reference to Section 11(g) where one holding company owns all the securities of the subsidiary which are qualified to vote upon the proposed combination or classification.[18]

Beyond this frontier of manifest exclusions, the Commission has seen fit to articulate the limits of Section 11(g) by implication rather than direct pronouncement. In conformance with its desire to formulate a policy which will be a product of practical experience, the Commission has been somewhat noncommittal in defining a reorganization plan as "any plan of reorganization of a registered holding company or any subsidiary of such company, which plan is subject to the provisions of Section 11(g) of the Act."[19] While this mimicry has enabled the Commission to examine each project as a *sui generis* transaction, it has not enlightened proponents of various corporate changes. Unless the Commission has previously declared that similar measures constitute a reorganization, the proponent is confronted by a parrot, not a

16. A declaration of stock dividends is thus outside the regulations of Section 11(g). See General Public Utilities, Inc., SEC Holding Company Act Release No. 889 (1937); Amarillo Gas Co., SEC Holding Company Act Release No. 1506 (1939). Compliance with Rule 12C-2 and Section 7 is all that is required even if the dividend is to be paid out of capital or unearned surplus. Commonwealth Gas & Electric Cos., SEC Holding Company Act Release No. 945 (1937). It is immaterial that the dividends are to be paid in the stock of subsidiary corporations. Penn Western Gas & Electric Co., SEC Holding Company Act Release No. 1046 (1938). But if the proposed dividend of subsidiaries' stock completely divests the holding company of its assets, the solicitation for proxies must comply with Section 11(g), not because it is a reorganization, but because it is a dissolution. Massachusetts Lighting Cos., SEC Holding Company Act Release No. 961 (1938); *cf.* Penn Western Gas & Electric Co., SEC Holding Company Act Release No. 1356 (1938).

17. See Southern Natural Gas Co., SEC Holding Company Act Release No. 682 (1937); Middle West Corp., SEC Holding Company Act Release No. 1005 (1938).

18. Republic Electric Power Corp., SEC Holding Company Act Release No. 1270 (1938); North Dakota Power & Light Co., SEC Holding Company Release No. 1577 (1939). Commission approval, of course, must be obtained before these steps may be taken, unless the company has applied for and been granted a plenary exemption from the Act. Although such an exemption relieves the corporation from performance in accordance with the Public Utility Holding Company Act, the requirements of the Securities Exchange Act may still place the transaction within Commission "control." See § 14(a) of the Securities Exchange Act of 1934, 48 STAT. 895(a), 15 U. S. C. 78(n)(a) (1934).

19. Rule 12E-1, SEC Holding Company Act Release No. 759 (1937). In fairness to the Commission it should be noted that the Act gives them no authority to define the term. The Commission therefore determined to treat as reorganizations any plans which they thought were intended to be enclosed by Section 11(g). The Commission has defined a reorganization for purposes of the Securities Act of 1933. Form E-1, C. C. H. Sec. Act Serv. ¶ 7231 (1939).

definition. In determining whether to submit to the requirements of Section 11(g), the proponent must consider the possibility that a candid Commission report may cast unfavorable light upon the proposal. Against this appraisal and the realization that submission will delay the consummation of a plan, he must weigh the threat of potential prosecution if he should proceed, without a Commission report, to solicit proxies or assents for a plan which the Commission later recognized as a reorganization.

Although the Commission's authoritative definition is too nebulous to assist a perplexed proponent, a review of the plans submitted under Section 11(g)[20] disclose that the Commission has selected a fairly precise standard for determining whether a given adjustment is a reorganization within the meaning of that section. A "plan of reorganization" for this purpose is any proposal to exchange securities which contemplates a revision of rights of the security holder directly related to his dividend or liquidation interests;[21] and this change must be such that a requisite vote cast in its favor will bind all members of the affected class. It is immaterial whether the measure affects one class of securities[22] or all of them, but unless the class affected must give its consent[23] by proxy or positive vote, the proposal is not within Section 11(g).

While reorganizations promulgated for public utility holding companies and subsidiaries in connection with relief sought under 77B or the Chandler Act are undoubtedly included within this definition,[24] the provisions of Section 11(g) are not limited to bankruptcy reorganizations or manipulations to defer impending insolvency. If the section were so confined, its value would be slight indeed, for the usual voluntary reorganization occurs not by a corporation *in extremis*, but by one which desires to reduce its fixed obligations.[25] This type of reorganization is, for the most part, conceived and sponsored

20. As revealed by the Public Utility Holding Company Act Releases Nos. 1-1749 (1935-1939).

21. Issues of securities, regulated by Section 7, may have an *indirect* effect upon dividend or liquidation interests, but such plans are not reorganizations unless the issue is accompanied by an exchange which would have a *direct* relation to dividend or liquidation interests. Note issues: Gardner Electric Light Co., SEC Holding Company Act Release No. 831 (1937); Gulf States Utility Co., SEC Holding Company Act Release No. 1446 (1939). Stock issues: Page Power Co., SEC Holding Company Act Release No. 1216 (1938); Amarillo Gas Co., SEC Holding Company Act Release No. 1505 (1939). Bond issues: Wisconsin Public Service Corp., SEC Holding Company Act Release No. 1230 (1938); Kansas Power & Light Co., SEC Holding Company Act Release No. 1656 (1939).

22. Security is here used as defined by Section 2(16) of the Act: Any note, draft, stock, bond, debenture, evidence of indebtedness, etc.

23. Or express disapproval by dissent.

24. See note 14, *supra*.

25. REPORT ON THE STUDY AND INVESTIGATION OF THE WORK, ACTIVITIES, PERSONNEL, AND FUNCTIONS OF PROTECTIVE AND REORGANIZATION COMMITTEES (1936-1939) pt. VII, 6. (Hereafter referred to as Protective Committee Reports).

by bankers and management,[26] and is the type where investor protection is most needed.[27] Each security holder who is entitled to a vote must be clearly informed of the reasons for the change and its effect upon his security so that he may intelligently exercise his franchise. While it is true that regardless of Section 11(g), Section 12(e) requires that solicitations be accompanied by a declaration listing the proponents of the change, their interest and their purpose, the statement would be one prepared by the declarant. In public utility holding companies especially, the fact that the report is the proponent's rather than the Commission's is significant.[28] As the corporate structure becomes more complex, with one holding company controlling several intermediaries which in turn control others, on down to the ultimate operating companies, the capitalization tends to increase in complexity. It becomes difficult for the unskilled to determine the effect of a particular change upon his class of security. The proponent's report may be accurate, but accuracy which increases confusion is not especially helpful. A Commission report, on the other hand, is designed to present the probable results of the project as simply and as comprehensibly as possible, although the complexity of some of the reports submitted raises the question whether such an objective is fully attainable. While recommending neither the acceptance nor rejection of a plan, the Commission attempts to afford the voter an opportunity to choose between the proposed reorganization and any other alternative.[29]

If either the corporate charter, trust indenture or state statute requires that any class of security holders consent to a reorganization plan,[30] a Commission report must accompany the solicitation for their proxies. The most common proposal for which such a Commission report has been issued is the recapitalization plan involving a reclassification or conversion of securities.

26. Protective Committee Reports, pt. VII, 2.

27. A detailed exposition of the exchange inducements and pressure devices which accompany management's control of the proxy machine occur in Protective Committee Reports, pt. VII, 266–294, 413–415; see also, Fortas, *The Securities Act and Corporate Reorganizations* (1937) 4 LAW & CONTEMP. PROB. 218, 227. For the plight of the small investor in an insolvent company, see BAILLE, INVESTMENT COMPANY REGULATION (a statement before the SEC, July 16, 1937).

28. The incompleteness of the investor protection afforded by Section 12(e) is disclosed in Comment (1939) 33 ILL. L. REV. 914. See also Bresnahan, *Will Provisions of Chandler Act Extending SEC Powers Afford Adequate Protection to Corporate Investors?* (1938) A 1 CORP. REORG. & AMER. BANKR. REV. 342.

29. For an example of a report, see Report on Reorganization Plan for International Paper and Power Co., SEC Holding Company Act Release No. 641 (1937). A hopelessly complicated report appears in American Gas & Power Co. and Birmingham Gas Co., SEC Holding Company Act Release No. 1257 (1938); see Meck and Cary, *Regulation of Corporate Finance and Management under the Public Utility Holding Company Act of 1935* (1938) 52 HARV. L. REV. 216, 246, n. 72.

30. The requirements for particular corporate changes are set forth in Protective Committee Reports, pt. VII, 464–525.

Although these proposals vary in detail, they conform on the whole to a general pattern whose predominant theme is either a partial or complete exchange of securities for those of a junior class.[31] A simplified example of this process is the exchange of bonds for preferred stock either partially or wholly, and/or the exchange of preferred for common either partially or wholly, and/or the extinction of common either partially or wholly.[32] A plan of this type clearly contemplates an exchange of securities which directly affects those stockholder rights related to dividend or liquidation interests.[33]

Another popular reorganization disclosed by the Commission releases is the reclassification plan which proposes the surrender of preferred stock for stock of lower par or stated value.[34] Since its orthodox purpose is to reduce fixed dividend charges, it is usually accompanied by a reduction in the dividend rate. This is certainly an exchange of securities, even though a literal exchange may never occur.[35] The old security may be merely stamped to record the alteration, but an exchange of securities has in fact occurred. For his old stock of par $100 the preferred holder now possesses a new security, albeit the same paper, of par $50. The change in liquidation interests is manifest, since the new issue[36] entitles the owner to a smaller proportion of the corporation's liquidated assets.

While proposals to modify the par or stated value of preferred have been recognized by the Commission as reorganization plans, similar alterations

31. See American Gas & Power Co. and Birmingham Gas Co., SEC Holding Company Act Release Nos. 1256, 1257 (1938); Mountain States Power Co., SEC Holding Company Act Release No. 1650 (1939). The Commission has held that where a plan of reorganization contemplates the issuance of securities Section 7 must be complied with. See Illinois Power & Light Corp., SEC Holding Company Act Release No. 634 (1937); American Gas & Power Co. and Birmingham Gas Co., SEC Holding Company Act Release No. 1256 (1938).

32. For variations on this theme, see SEC Holding Company Act Releases Nos. 796 (1937), 876 (1937), 973 (1938), 1090 (1938), 1139 (1938), 1271 (1938), 1312 (1938), and 1495 (1939).

33. Alterations in voting rights which are protected by the requirements of Section 7 are not considered reorganizations because the effect of such modifications on dividend or liquidation interests are too remote. See North American Co., SEC Holding Company Act Release No. 1427 (1939); Peoples Light & Power Co., SEC Holding Company Act Release No. 1664 (1939). An excellent illustration because of the separate treatment of declarations under Sections 7 and 11 may be found in Engineers Public Service Co., SEC Holding Company Act Release No. 1160 (1938). The addition of a conversion privilege to preferred's rights has also been considered too indirect a change of liquidation and dividend interests to warrant submission to Section 11(g). See Northern States Power Co., SEC Holding Company Act Release No. 874 (1937).

34. See SEC Holding Company Act Release No. 414 (1936); Illinois Power & Light Corp., SEC Holding Company Act Release No. 582 (1937).

35. *Cf.* note 49, *infra.*

36. Such an alteration would be a stock issue. SEC v. Associated Gas Co., 95 F. (2d) 795 (C. C. A. 2d, 1938), (1938) 48 YALE L. J. 149.

for common do not require compliance with Section 11(g).[37] This apparent inconsistency is resolved by the factual distinction inhering in the results of the two transactions. Unlike preferred, a change in the par or stated value of common has no effect upon its participation in liquidation, since common, regardless of its par or stated value, shares pro rata in the remaining assets after all other claims have been satisfied.[38] Nor does the alteration directly influence the dividends received by common.[39] Total profits available for dividends being constant, the dividend rate will vary inversely with the change in par value, leaving each holder's dividends unmodified. Such a plan might indirectly affect the divident rights of preferred by increasing potential dividends, but the alteration in their rights would be immaterial so long as preferred had no vote on the proposal. Even if the certificate of incorporation guaranteed the preferred a vote, the proposal would still not be a reorganization, since the contemplated change would not result in a *direct* modification of the preferred dividend rights.[40] Where the only alteration contemplated, however, is the complete extinction of common, the proposal becomes a reorganization if the common is entitled to a vote.[41] In such a case, the holders of common are conceived to be exchanging their right to potential dividends and liquidation proceeds, even though they are receiving nothing in return.[42]

37. Changes in stated value of common: Columbia Gas & Electric Co., SEC Holding Company Act Release No. 1417 (1939); New York and Richmond Gas Co., SEC Holding Company Act Release No. 1442 (1939); Edison Sault Electric Co., SEC Holding Company Act Release No. 1705 (1939). Changes in par value of common: American Public Service Co., SEC Holding Company Act Release No. 538 (1937); Ohio Fuel Gas Co., SEC Holding Company Act Release No. 1720 (1939); Huntington Development & Gas Co., SEC Holding Company Act Release No. 1721 (1939).

38. This may be altered by charter requirements or where the preferred is participating as to assets. In practically all charters, however, there are one or more classes of stock which in liquidation must wait until all other claims have been satisfied. A change in the par or stated value of such securities would not modify their liquidation value.

39. Common's equity is not affected by an amendment to the certificate of incorporation establishing a fund for earned surplus which must reach a set amount before payment of any dividends to common. A proposal to create such a cushion, therefore, has not been considered by the Commission to be within the regulations of Section 11(g). North American Co., SEC Holding Company Act Release No. 1427 (1939).

40. See Cincinnati Gas & Electric Co., SEC Holding Company Act Release No. 1243 (1938).

41. Of course, compliance with Section 11(g) is not necessary so far as common is concerned unless common still has equity in the corporation, entitling it to a vote. See the Chandler Act §§ 137, 179, and 216(8). 52 STAT. 887, 892, and 895, 11 U. S. C. §§ 537, 579, and 616(8) (Supp. 1938).

42. See Northern States Power Co., SEC Holding Company Act Release No. 1355 (1938); also SEC Holding Company Act Release 1267 (1938), and Northern States Power Co., SEC Holding Company Act Release No. 1471 (1939). This proposal could not secure the necessary consent of the common shareholder, unless they also owned preferred, the value of which would be increased.

Mergers and consolidations are clearly reorganizations when accomplished by the exchange of securities, although the securities exchanged may not differ in pecuniary value.[43] But, if Corporation *A* merges with Corporation *B* by buying the stock of *B* for cash, the transaction is not a reorganization so far as the stockholders of *B* are concerned, since there has been no exchange of securities.[44] If unification into a new corporate entity is contemplated, the process would be a reorganization as applied to the stockholders of *A*, since their stock in the old corporation would in fact be exchanged for the securities of the new.[45] Where the holding company seeks to affect a merger by offering to exchange securities with investors who own shares of a subsidiary's stock, there need be no compliance with Section 11(g).[46] This proposal has not been included within the ambit of reorganization activity, because the method of effectuating the change contains none of the customary corporate sanctions embodied in the principle of majority rule.[47] The charter or statutes usually stipulate that a corporate change will be binding upon approval by a requisite number of stockholders.[48] The instant procedure, however, has none of this quality of official action. It is simply a transaction, differing in no material respect from one in which individual *X* asks individual *Y* to exchange his holdings in Corporation *A* for *X*'s holdings in Corporation *B*.

It must not be thought that reorganization comprises only an alteration in the value of a stockholder's claim or a change in the property to which this claim relates. A plan to extend the maturity of bonds which proposes that a class of bondholders release an obligation presently payable for a security maturing some time in the future falls within the Commission's definition.[49] If a bondholder is to be bound by the principle of majority rule,

43. SEC Holding Company Act Release No. 1271 (1938); Northern States Power Co., SEC Holding Company Act Release No. 1355 (1938).

44. See Southern Natural Gas Company, SEC Holding Company Act Release No. 682 (1937); Cumberland County Power and Light Company, SEC Holding Company Act Release No. 950 (1937). It is immaterial that the cash has been obtained by a new issue of *A*'s stock. See SEC Holding Company Act Release No. 988 (1938).

45. *Cf.* Form E-1, Rule 5(e) of the Securities Act of 1933, C. C. H. Sec. Act. Serv. ¶7231 (1937).

46. See Eastern Shore Gas Corp., SEC Holding Company Act Release No. 760 (1937).

47. The Commission has excluded from Section 11(g) corporate exchange offers unaccompanied by a class vote which if successful would bind all members of the class. San Antonio Public Service Co., SEC Holding Company Act Release No. 1630 (1939); West Penn Power Co., SEC Holding Company Act Release No. 1639 (1939); New York Power & Light Corp., SEC Holding Company Act Release No. 1710 (1939).

48. See note 30, *supra*.

49. See SEC Holding Company Act Release No. 1432 (1939). It is immaterial whether the method of executing the extension be the issue of new securities or the stamping of old ones, for in both procedures an exchange is achieved. SEC v. Associated Gas Co., 95 F. (2d) 795 (C. C. A. 2d, 1938), (1938) 48 YALE L. J. 149.

a solicitation for his consent must conform with Section 11(g).[50] Because a plan to extend the maturity of notes lacks this fundamental element of majority rule, the Commission has decided that proposals for note renewals are not reorganization plans.[51]

It may be argued that the Commission should expand Section 11(g) to include all changes in rights, preferences, or priorities of security holders, since the same necessity for a full and fair disclosure of all material facts attaches to these alterations as to the adjustments which at present constitute a plan of reorganization; that Section 7, requiring Commission approval, and Section 12(e), requiring solicitations be accompanied by managerial statements of purpose and probable results, do not provide sufficient protection; that since Section 7 permits declarations to become effective unless contrary to state laws, unfair or otherwise detrimental to investor, consumer or public interest, the application of such a "fairness standard" compels the Commission to confirm many plans to which it would not consent if it were a stockholder;[52] that in the absence of an explanatory report, Commission approval may be used as a psychological inducement to obtain the consent of security holders; and, finally, that the statements ordered by Section 12(e) may well be worthless because, though truthful, they are too complex for unskilled analysis.[53] Although this possible objection has all the validity of most abstract agitation for reform, it is unsatisfactory when measured against the practical exigencies with which the Commission is faced. Were the Commission to extend the scope of Section 11(g), matters of vital concern might well be submerged beneath a flood of comparatively trivial detail. Either delay would be essential to buttress efficiency or efficiency would be sacrificed to haste.[54] The inevitable result would be the impairment of goodwill and confidence upon which the success or failure of the Commission ultimately depends. By its self-imposed limitations on the confines of Section 11(g), the Commission seems to have moulded the ambit of this regulation to its most effective proportions.

50. See note 47, *supra*.

51. See Southwestern Development Co., SEC Holding Company Act Release No. 1531 (1939); Portland General Electric Co., SEC Holding Company Act Release No. 1560 (1939). Nor is a proposal to reduce the interest rate on notes a plan of reorganization. See Lone Star Corp., SEC Holding Company Act Release No. 1725 (1939).

52. For a discussion of the Commission's application of this standard under Section 7, see Meck and Cary, *Regulation of Corporate Finance and Management under the Public Utility Holding Company Act of 1935* (1938) 52 HARV. L. REV. 216, 247.

53. For the inadequacy of this protection, see Fortas, *The Securities Act and Corporate Reorganizations* (1937) 4 LAW & CONTEMP. PROB. 218, 232, *et seq.*; Protective Committee Reports, pt. vii, 414.

54. The Commission has recognized the limitations on administrative efficiency. See Protective Committee Reports, pt. VII, 3 and 901. Examination of these limitations are contained in Buchanan, *The Public Utility Holding Company Problem* (1937) 25 CALIF. L. REV. 517, 548 *et seq.*; Laporte, *Changes in Corporate Reorganization Procedure Proposed by the Chandler and Lea Bills* (1938) 51 HARV. L. REV. 672, 675.