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Asa S. Herzog, *The Chapter X Rules*, 31 U. Miami L. Rev. 227 (1977)

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university of miami law review

VOLUME 31

WINTER 1977

NUMBER 2

THE CHAPTER X RULES*

ASA S. HERZOG**

As a member of the Judicial Conference's Advisory Committee on Bankruptcy Rules, Judge Herzog offers a unique insight into the recently enacted chapter X rules. The author analyzes the rules in the order in which they would appear in an actual chapter X case. As each rule makes its appearance, the author gives his opinion as to how the courts should interpret it, while keeping in mind the overall framework and purposes of bankruptcy proceedings in general. In short, Judge Herzog's article serves as a practical guide to the practicing attorney.

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* Adapted from a paper on the Chapter X Rules presented at the Annual Meeting of the National Conference of Bankruptcy Judges in Mexico City on November 1, 1975.

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The chapter X rules promulgated by the United States Supreme Court pursuant to Title 28, U.S.C., chapter 131, section 2075¹ became effective in August 1975. The chapter X rules, which parallel the Bankruptcy Rules, are divided into nine parts commencing with the initiation of a chapter X case and ending with *General Provisions*. This article does not precisely adhere to the same order in which the rules were written, but follows its own scheme in order to highlight the course of a chapter X case under the new rules. It must be observed that none of the rules prescribed by the Supreme Court pertaining to bankruptcy presume to make substantive changes in the Bankruptcy Act. They do, however, make drastic changes in practice and procedure. The Act, which itself is largely procedural, must, therefore, be read in light of, and together with, the rules.

I. COMMENCEMENT OF CASE

The starting point is the commencement of a chapter X case, and as in the other chapters, there is a "Case." The "Case" *includes all the proceedings and matters which arise in connection with the case and, of course, the case is initiated with the filing of a petition, which under chapter X may be either voluntary or involuntary.*

Rule 10-104 provides for the filing of a voluntary petition in the form of either an original petition or one filed in a pending bankruptcy case, which in turn can be either before or after adjudication.

Rule 10-105 provides for the filing of an involuntary petition,² and it also may be in the form of an original petition, or one filed in a pending bankruptcy, either before or after adjudication.

In either case, an original and six copies must be filed, but one

1. The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act.

Such rules shall not abridge, enlarge, or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. § 2075 (1970).

2. A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to \$5,000 or more, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter.

Bankruptcy Act § 126, 11 U.S.C. § 526 (1970).

must be alert for local rules which may require more than six copies.

Of course, there is a third way in which a case can land in the area of chapter X; and that is by conversion of a chapter XI case to a chapter X case. Under rule 11-15(a) of the chapter XI rules, a *debtor* eligible for relief under chapter X may move to have the case proceed under that chapter, and under rule 11-15(b), the SEC or other party in interest has 120 days *after* the first date set for the first meeting in the chapter XI case to move to have the case converted to chapter X. Granting of the motion is "*deemed to constitute approval of a petition under Chapter X.*"³ On application and for cause shown, that 120 days may be enlarged.⁴ The rule is designed to avoid the situation where the boom is lowered with a motion to convert to chapter X when the debtor is on the verge of achieving confirmation in the chapter XI case.

II. THE AUTOMATIC STAY

Chapter X contains several stay provisions:

1. Section 113⁵ provides that *prior to approval* of the petition, the Judge *may*—for cause shown—grant a temporary stay of prior bankruptcy, mortgage foreclosure, or equity receivership—or any other act to enforce a lien against debtor's property—and he *may* enjoin commencement or continuation of suits.

2. *After the petition is approved*, in addition to the relief of section 11,⁶ the court *may* enjoin commencement or continuation of any suit or any lien enforcement against the debtor or the trustee.

3. Under section 148,⁷ an order approving the petition *shall* operate as a stay of prior pending bankruptcy, mortgage foreclosure, equity receivership or lien enforcement.

Under both rules 10-104 and 10-105, the mere filing of the petition operates as an automatic stay of administration of a pending bankruptcy case, while rule 10-601 operates to automatically stay suits and lien enforcement. The rules accelerate section 148. The automatic stay comes into play *not* when the petition is approved (which possibly could take some time), but when the petition is filed.

Rule 10-601 (just as does rule 11-44 in a chapter XI case) makes the filing of the petition operate as an automatic stay of all suits,

3. Bankruptcy Rule 11-15(d).

4. Bankruptcy Rule 11-15(b).

5. 11 U.S.C. § 513 (1970).

6. 11 U.S.C. § 29 (1970).

7. 11 U.S.C. § 548 (1970).

actions, lien enforcements or any proceeding to liquidate or rehabilitate the debtor or its property. Under section 113⁸ and section 116(4),⁹ the stay is discretionary. On the other hand, under rule 10-601 it is *automatic and all pervasive*. The rule also shifts the burden of vacating the stay. Instead of the debtor or trustee moving for a stay, the creditor must commence an adversary proceeding¹⁰ to vacate, annul, modify or condition the stay.

III. REFERENCE

In the version sent by the Advisory Committee to the Standing Committee, the proposed chapter X rules provided for the automatic reference of the case to the bankruptcy judge. This is the ordinary procedure under chapters XII and XIII. The Standing Committee found it expedient to change that. Under rule 10-103, *unless local rule provides for automatic reference*, the case is assigned to a district judge who may keep the entire case, or refer it to a bankruptcy judge "generally or for any specified purpose."

There should be no trouble with the word "generally." It means that the reference can be complete, just as in chapter XI or chapter XIII cases. There may be trouble with the words "any specified purpose." Does that mean a reference of some aspect of the case to "hear and determine" or to "hear and report"?

This writer reads the chapter X rules as expressing the confidence of the Supreme Court and of the Congress that the bankruptcy judges are competent and capable of presiding over a chapter X case.

Rule 10-103 supersedes section 117¹¹ and the clear intent is to eliminate reference to a bankruptcy judge as special master.

IV. ANSWER TO VOLUNTARY AND INVOLUNTARY PETITION

The mere fact that an involuntary petition may be filed is but one of the many features that distinguish a chapter X case from a chapter XI case. Another feature is the fact that apart from the debtor's right to answer an involuntary petition, an answer may be filed by a creditor, stockholder, or indenture trustee to *either a voluntary or involuntary* petition. In this respect rule 10-112(a)(2) departs from section 137¹² of the Act. The statute permits a stock-

8. 11 U.S.C. § 513 (1970).

9. 11 U.S.C. § 516(4) (1970).

10. An adversary proceeding is governed by Part VII of the Bankruptcy Rules which are made applicable in chapter X cases by rule 10-701.

11. 11 U.S.C. § 517 (1970).

12. 11 U.S.C. § 537 (1970).

holder to file an answer only if the debtor is found to be solvent, while the rule has no such requirement. The Advisory Committee's Note to rule 10-112 makes it plain that it was intended that the rule effect such a change. Insolvency or inability to pay debts as they mature may be the very issue.¹³

A debtor has 20 days after issuance of a summons by the clerk or by the bankruptcy judge to serve and file its answer to an involuntary petition.¹⁴ A creditor, stockholder, or indenture trustee, on the other hand, may answer a voluntary or involuntary petition not less than 15 days before the first date set for the first meeting of creditors and stockholders.¹⁵ The meeting, required by rule 10-212, will be discussed in section VIII. For the present, it should be noted that the time for the creditor, stockholder, or indenture trustee to answer does not expire until 15 days before that meeting. Since that meeting is keyed to the approval of the petition, the question of approval will be discussed next.

V. APPROVAL OF THE PETITION

Approval of the petition is a distinctive feature of chapter X. A bankruptcy petition or petitions for relief under chapters XI and XII do not require court approval. Approval is not *pro forma*. Rather, it is a judicial determination made on the basis of only two findings: (1) that the petition complies with the requirements of chapter X (e.g., is the debtor eligible for relief under this chapter, or does his petition contain the allegations required by statute?); and (2) was the petition filed in good faith?¹⁶ This is all statutory and is not changed by the rules. The rules merely prescribe the procedure to be followed. Rule 10-113(a) deals with approval of a voluntary petition; rule 10-113(b) relates to approval of an involuntary petition when no answer has been filed or when an answer has been filed which fails to set forth a valid defense or objection. Rule

13. Bankruptcy Act § 130(1), 11 U.S.C. § 530(1) (1970).

14. Bankruptcy Rule 10-112(a)(1).

15. Bankruptcy Rule 10-112(a)(2).

16. Without limiting the generality of the meaning of the term "good faith," a petition shall be deemed not to be filed in good faith if—

(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

(2) adequate relief would be obtainable by a debtor's petition under the provisions of chapter 11 of this Title; or

(3) it is unreasonable to expect that a plan of reorganization can be effected;

or

(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding.

Bankruptcy Act § 146, 11 U.S.C. § 546 (1970).

10-113(c)(2) deals with approval of a petition to which a timely answer has been filed. This is the situation where there must be a trial of issues raised by the petition and answer.

Now, in the 10-113(a) or (b) situations—that is, the voluntary petition and the involuntary petition where no timely valid answer has been filed—approval may be given with or without a hearing. It is entirely within the discretion of the bankruptcy judge (which-ever judge is handling the case). The order may be entered *ex parte* (based merely on the allegations in the petition), after an informal hearing, or a hearing on such notice as the judge may direct.¹⁷

As to approval where a timely and valid answer has been filed, rule 10-113(c)(2) prescribes a hearing at the “*earliest practicable time*” which is considerably more explicit than the statutory language—“*as soon as may be*”—now found in sections 143¹⁸ and 144¹⁹ of the Act.

The judge has *only* these options: he may approve the petition; he may permit it to be amended; or he may dismiss it. He may not, at this juncture, adjudicate.

Thus, this is the situation: if the petition is “voluntary,” there can be immediate approval; if it is “involuntary,” there can be approval only after expiration of the 20 day period within which the debtor may answer. If a valid answer is filed, approval can come only after the issues raised by the answer have been tried.

There can be a problem: assume that a voluntary petition is approved; then, 15 days before the date set for the first meeting of creditors and stockholders, an answer is filed. What happens then? The solution is simple: the issue is tried at the “*earliest practicable time*”; and if the answer does not hold up, the judge again approves the petition; otherwise he dismisses it. It is seen then that the first approval is really, as the Advisory Committee’s Note states, only a “preliminary” approval. It could be called a “provisional” approval. To make this procedure a little more palatable to one’s legal sensibilities, rule 10-112(a)(2) provides that a timely answer is deemed to constitute a motion to vacate any prior order approving the petition.

Why is there such haste to get the “preliminary” approval in the first place? Why not wait to see if a valid answer is timely filed? It is inadvisable to proceed in this manner because it is all one ball of wax. As previously mentioned, the time for a creditor, stockholder, or indenture trustee to answer does not expire until 15 days

17. Bankruptcy Rule 10-113(c)(1).

18. 11 U.S.C. § 543 (1970).

19. 11 U.S.C. § 544 (1970).

before the date set for the first meeting of creditors and stockholders, and that first meeting is keyed to approval of the petition. It is held *not less than 30 days nor more than 90 days after approval* of the petition. Thus, unless there is approval, the meeting date cannot be fixed; and without a meeting date, the time to answer by creditors, stockholders and indenture trustees continues to run. Hence, there must be two approvals.

Early approval is also necessary to commence some kind of administration of the estate because a trustee cannot be appointed until the petition has been approved.²⁰ True, a receiver may be appointed in the interim,²¹ but the policy of the Act and the rules is contrary to that course unless it is found to be absolutely necessary. The receivership would automatically terminate upon appointment of a trustee, and a caretaker receiver in a crisis period could do little that would be effective in keeping the business viable—which, of course, is what chapter X is all about.

VI. OFFICERS

In a chapter XI case the debtor remains in possession. On application and for cause shown, however, the court may appoint a receiver and authorize him to conduct the business.²² In a chapter X case, if the liabilities are \$250,000 or over, on approval of the petition the court *must* on its own initiative appoint one or more trustees.²³ *Appointment is mandatory* in such a situation. In 1938 an indebtedness of \$250,000 probably was considered significant; but today one can almost run up that kind of debt on a few credit cards. It would seem that it can safely be assumed that every debtor justifiably in chapter X owes more than \$250,000 and that a trustee must be appointed. Note, however, that a trustee may be appointed only *after* approval of the petition; this is another reason why an early approval is necessary.

The entire thrust of a corporate reorganization rests upon the concept of supervision by disinterested persons. The Act and the rules contemplate an independent investigative process looking into the cause of the debtor's financial plight and into the probabilities of survival and revival, as well as a search for causes of action arising from improprieties. Even in the small case where a debtor is left in possession, the court may appoint an "examiner" to perform these

20. Bankruptcy Rule 10-202(a).

21. Bankruptcy Rule 10-201(a).

22. Bankruptcy Rule 11-18(b).

23. Bankruptcy Rule 10-202(a).

investigatory duties. The Act and the rules also contemplate that the plan of reorganization originate with the independent trustee. While creditors, stockholders, and indenture trustees may make suggestions to the trustee for plans,²⁴ it is only after expiration of the time fixed by the court for the trustee to file a plan or report why a plan cannot be formulated that the creditors and stockholders may file plans with the court.²⁵

It is an historical fact that under the equity receivership system, plans were rigged to give advantages to insiders. That was one of the basic defects of that system. Chapter X blocks insider control of the reorganization process by requiring that both the trustee and his attorneys be "disinterested"; and rule 10-202(c)(2) lists the guidelines for determining disinterestedness.²⁶

In this connection, there is an area that is puzzling. Under section 156²⁷ of the Act, the judge may appoint a person who is a director, officer, or employee of the debtor as an "additional trustee" to operate the business. The rules do away with the label "additional trustee," but specify that the court may appoint "co-trustees." The Advisory Committee's Note to rule 10-202(c)(2) states that the label of additional trustee, as used in section 156, is *not* retained by the rule and that no label is substituted for such a person "if one is appointed a trustee." Thus, it recognizes that an officer, director, or employee may indeed be appointed as a co-trustee; the Note, however, goes on to say that such person would have to meet the requirements of "disinterestedness" in subdivision (c)(2) as would any co-trustee appointed under the rule.

This is a clear contradiction. The Note suggests that an officer, director, or employee may be appointed trustee, albeit under a different label, but that he must be disinterested. The problem is how

24. Bankruptcy Rule 10-301(a).

25. Bankruptcy Rule 10-301(c)(1).

26. A person shall not be deemed disinterested if (A) he is a creditor or stockholder of the debtor; (B) he is or was an underwriter of any of the outstanding securities of the debtor or within 5 years prior to the date of the filing of the petition was the underwriter of any securities of the debtor; (C) he is, or was within 2 years prior to the date of the filing of the petition, a director, officer, or employee of the debtor or such underwriter or an attorney for such debtor or underwriter; or (D) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders. Representation of a creditor or stockholder of the debtor in a matter other than one which may become involved in the Chapter X case need not be deemed of itself to affect the disinterestedness of an attorney.

Bankruptcy Rule 10-202(c)(2).

27. 11 U.S.C. § 556 (1970).

can he be disinterested since rule 10-102(c) states that a person shall *not* be deemed disinterested if he is, or has been, within 2 years prior to the date of the filing of the petition, a director, officer, or employee of the debtor. That is a point which will one day require judicial interpretation. It is this writer's view that the Advisory Committee's Note is erroneous and that an officer, director, or employee of the debtor may be named "co-trustee" to assist the trustee in operating the business and managing the property of the debtor and that the chapter X rules did not intend to bar such appointment.

Chapter X tangentially refers to appointment of a receiver by tacking a sentence on to section 117²⁸ which deals with reference of the case to a referee: "The appointment of a receiver in a proceeding under this chapter shall be by the judge." That is the extent of it. So actually, statutory authority must be found in section 2(a)(3).²⁹ Rule 10-201, however, specifically provides for appointment of a receiver, although the Note states "this Rule contemplates that receivers will rarely be appointed" and that prolonged receivership is not compatible with chapter X. Why have one at all? As already pointed out, there could be an interim period before approval of the petition, especially in the case of an involuntary petition where the court *must* wait out the 20 days within which the debtor may answer. There is a more practical reason for delay in appointing a trustee, and that is the difficulty often encountered in finding a disinterested person to act. In a very large case, it is not always easy to find a qualified person who meets the tests for disinterestedness. If that happens, there can easily be a gap of several weeks, and appointment of a receiver may be necessary for any one of three purposes: (1) to take charge of the property—to act in a custodial capacity; (2) to conduct the business; or (3) to afford representation to the estate in any action or proceeding to protect the estate from inroads by way of execution, levy and the like.

28. 11 U.S.C. § 517 (1970).

29. The Act provides that courts of bankruptcy are invested with jurisdiction to:

Appoint upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified; and to authorize such receiver, upon his application, to prosecute or defend any pending suit or proceeding by or against a bankrupt or to commence and prosecute any suit or proceeding in behalf of the estate, before any judicial, legislative, or administrative tribunal in any jurisdiction, until the petition is dismissed or the trustee is qualified: *Provided, however,* That the court shall be satisfied that such appointment or authorization is necessary to preserve the estate or to prevent loss thereto

Bankruptcy Act § 2(a)(3), 11 U.S.C. § 11(a)(3) (1970).

In the case of a voluntary petition, the court may appoint a receiver on its own initiative or upon application.³⁰ In the involuntary case, on the other hand, appointment may be made only upon application and only after hearing on notice to the debtor and such others as the court may designate. Notices may be dispensed with if it can be shown that irreparable damage would otherwise result.³¹ The applicant seeking appointment of the receiver must furnish a bond in such amount as the court may fix to indemnify the debtor for costs, counsel fees, expenses and damages resulting from the receivership should the petition be dismissed.³² As the Committee Note suggests, this should "tend" to discourage such applications.

It must be assumed that appointment of a receiver will be occasioned by some real urgency, with time being of the essence. It is to meet this situation that the rule specifically provides that the only eligibility requirement is that the receiver be eligible to be a bankruptcy trustee—that is, that he be competent, that he have no interest adverse to the estate, and that he meet the residency requirement. He is not required to meet the stringent test of disinterestedness.³³

So much for receivers. Let us return to the trustee who is the lynchpin of the case. At the outset, the trustee must engage attorneys and accountants. The latter pose no real problem; but when we come to the attorney, both statute and rule require that the attorney meet the same test of "disinterestedness" as a trustee. Here again we can run into a stone wall in a large case where every sizeable firm in town in one way or another will collide with one of the clauses in rule 10-202(c)(2), and thus be rendered ineligible. The Note to the rule does say that representation of a creditor or a stockholder in a matter unconnected with the chapter X case does not necessarily mean that the attorney is thereby automatically deemed "not disinterested." The Note goes on to add that the exception is not meant to encourage appointment of attorneys who represent a creditor or stockholder.³⁴ If other competent attorneys are available, the trustee's attorney should be selected from that group. In other words, the Note states that an attorney who represents a creditor or stockholder, even in an entirely unrelated matter, is to be selected as a last resort. He is to be engaged only if no other competent attorney is available. In any event, just one *caveat* before

30. Bankruptcy Rule 10-201(c)(2).

31. Bankruptcy Rule 10-201(c)(1).

32. Bankruptcy Rule 10-201(d).

33. Bankruptcy Rules 10-201(e), 209(d).

34. Bankruptcy Rule 10-202(c)(2), Advisory Comm. Note.

leaving the subject: failure to disclose any material fact on the question of "disinterestedness" may result in denial of compensation and reimbursement of expenses. The trustee, too, can lose his compensation if it shall appear that he failed to make diligent inquiry into the connections of the attorney.³⁵

VII. TRUSTEE'S DUTIES

Rule 10-208 sets forth the duties of the chapter X trustee. The first duty is to file, within the time fixed by the court, the list of creditors and stockholders which is required by rule 10-108(a). This list is critical for, as it shall be shown, it has a direct bearing on the necessity for the filing of proofs of claims.³⁶ The trustee is required to report on his operation of the business at the first meeting of creditors and to file periodic reports on operations thereafter; he must conduct an investigation of the debtor's acts and conduct, liabilities, operation of the business and the desirability of continuance thereof. Under section 167 of the Act,³⁷ the trustee is to make this investigation if directed by the court to do so. Under the rule, it is his duty to do so whether under direction or not; but court authorization must be obtained before the trustee may examine officers, directors, or other witnesses. The trustee must report to the court the facts pertaining to fraud, misconduct, mismanagement and possible causes of action. In addition to this report, the trustee is required to file a statement of his investigation and to cause copies of this statement (or a summary thereof) to be mailed to creditors, stockholders, indenture trustees, the SEC and others as the court may direct. Distinction must be made between the report which is made to the judge and the statement—that is, a resume of the financial status of the debtor. It is this statement which is mailed to creditors and stockholders. The purpose of this mailing is to keep interested parties informed so that they may exercise an intelligent judgment when the time comes to vote on one or more plans that may be submitted to them. The trustee is obliged to notify creditors and stockholders that they may submit to him, by a date fixed by him, plans or suggestions for a plan; we will return to this subject in the discussion of those rules which relate to such plans.

35. Bankruptcy Rule 10-206(b).

36. Bankruptcy Rule 10-401.

37. 11 U.S.C. § 567 (1970).

VIII. THE MEETING OF CREDITORS AND STOCKHOLDERS

The concept of a meeting of creditors and stockholders—now embodied in rule 10-212—is entirely new. Chapter X itself makes no provision for such a meeting, though it is provided for in ordinary bankruptcy and the other “chapter” cases. Section 161³⁸ does provide for a hearing on notice to creditors and stockholders, but section 162³⁹ specifies that the hearing is for the purpose of considering objections to continuance of the debtor in possession or to the retention by the trustee on the grounds that he is not qualified or not disinterested. Of course, with the parties before the court, there is nothing to prevent the transaction of other business at that hearing. Technically speaking, however, there is no statutory provision for a first meeting of creditors and stockholders.

Rule 10-212 prescribes a meeting to be held not less than 30 nor more than 90 days after approval of the petition. It has been noted that the meeting of creditors and stockholders is keyed to approval of the petition, and that the last day for creditors and stockholders to answer a petition is keyed to the first date set for the first meeting. Note that the time fixed by the rule to hold the meeting may not be extended beyond the 90 day maximum.⁴⁰

The agenda of the meeting, as set forth in rule 10-212(b), calls for the bankruptcy judge: (1) to preside over such business as is proper under chapter X, including examination of the debtor; (2) to hear objections to retaining the trustee, or continuing the debtor in possession—this is, of course, derived from sections 161⁴¹ and 162⁴² of the Act; (3) to appoint a trustee if one was not previously appointed and the debtor is not continued in possession, and, if he does appoint a trustee at this meeting, to fix a subsequent date for a hearing on objection to retention in office of that trustee; and (4) to receive the trustee’s report. This report should show the results of any investigation up to that time or, at the least, a report on what has been done, and the present status of the case.⁴³

IX. NOTICES

There should not be too much time spent on the subject of “notices.” The first meeting of creditors and stockholders does raise

38. 11 U.S.C. § 561 (1970).

39. 11 U.S.C. § 562 (1970).

40. Bankruptcy Rule 10-901(3).

41. 11 U.S.C. § 561 (1970).

42. 11 U.S.C. § 562 (1970).

43. Bankruptcy Rule 10-212, Advisory Comm. Note.

the question of how much notice is given and who is saddled with the burden of giving it. Therefore, a few words concerning notices would be appropriate at this point. As in the case of the other rules, the chapter X rules have a "notice rule," rule 10-209, which collects all provisions for notices specifically applicable to chapter X. Subdivision (a) requires at least 30 days notice of the first meeting, and subdivision (b) requires at least 20 days notice of seven specified events including a hearing on retention in office of a trustee who is appointed at the first meeting, if one is appointed at that time. It is not necessary to go through the list—it's the usual: dismissal, conversion to bankruptcy, time fixed for filing objections to confirmation, hearing on allowances, etc.

There is this important feature to note, however—unlike bankruptcy and chapter XI, notice is *not* given by the court, but by the trustee, receiver, or debtor in possession. Notice is complete upon deposit in the mail at least 20 days (and in the case of the first meeting, 30 days) before the event of which notice is to be given.

Pursuant to rule 10-209(c), creditors, stockholders, and indenture trustees must also be given other notices, such as the dismissal of the case *after* approval of the petition (no notice is necessary if dismissal is before the petition is approved), the time fixed for accepting a plan, the hearing on approval or confirmation of a plan, the hearing on any proposed modification of a plan that has been approved, and of the date fixed to file a written rejection of the proposed modification. Only creditors and indenture trustees are given notice of the time fixed for the filing of proofs of claims. The next section will show why it is not necessary for stockholders to receive such notice.

X. CREDITORS AND STOCKHOLDERS

This would be an appropriate time to discuss the plan—how it originates, progresses through the various stages and, hopefully, how it achieves its end. First, however, a few words as to those most concerned with the progress of a chapter X case—the creditors and stockholders. With all the discussion of receivers, trustees and attorneys, it may be forgotten that while the purpose of reorganization is to rehabilitate a corporation and make the business viable, the equity of the company, in terms of its value as a going concern, belongs to creditors and, if the company is solvent, to the stockholders as well. Before the case is ended, in one way or another, that equity or its equivalent value, if any, is going to be distributed among the creditors and stockholders entitled to participate. That raises the question of claims.

A corporate reorganization may, and usually does, involve a great number of creditors and stockholders. Therefore, the filing, listing, checking and docketing of claims can be onerous and futile. It will be recalled that under rule 10-108 the trustee is under a *duty* to file, within such time as the court may fix: (1) a list of the names and addresses of creditors of each class, the amounts and character of their claims and securities, and a designation as to whether the claim is disputed, contingent, or unliquidated; and (2) a list of names and addresses of stockholders of each class showing number and kind of shares registered in the name of each. The importance of this is emphasized by a reiteration of this duty in rule 10-208(a)(1).

These lists serve a vital function, for under rule 10-401(a) they constitute *prima facie* evidence of the validity of claims of creditors who are not listed as disputed, contingent, or unliquidated as to amount, and *prima facie* evidence of the validity and amount of stock interests. This rule permits the use of the lists to determine the claims of creditors and stockholders in place of formal proofs of claim. Creditors and stockholders so listed may, *but need not*, file proofs of claim. There are, however, certain creditors who must file claims. Thus, there are those who may, and those who must file claims. Rule 10-401(b) permits the court to fix a time for filing claims (a "bar" date). There are three categories of claimants who *may* file within the time span: (1) those who are not listed; (2) those who are properly listed, but for reasons of their own—probably from habit—prefer to file a formal proof; and (3) those who are listed, but who disagree with the amount for which they are listed.

According to rule 10-401(b)(3), those who *must* file are: (1) those whose claims are listed as *disputed*, *contingent*, or *unliquidated as to amount*; or (2) those who are indeed *properly* listed, but as to whom the trustee thinks it desirable that claims be filed, as for instance where a person must be listed as a creditor because he appears as such on the debtor's books, but the trustee has discovered reasons to doubt the validity of the claim, or has discovered the existence of defenses or counterclaims. In that case, the trustee may apply to the court for an order requiring the particular creditor to file a formal proof of claim within a time fixed by the court.

Proofs of claims heretofore were ordinarily filed with the trustee, but rule 10-401 adopts Bankruptcy Rule 302(b) and *claims now must be filed with the court*. Rule 10-401(e) states that, as in ordinary bankruptcy, a claim filed is deemed allowed unless objected to. The same is true of a claim listed by the trustee pursuant to rule 10-108. These provisions will obviate great inconvenience

and expense to creditors and stockholders as well as lighten the burden of collecting and registering claims.

Stockholders are treated very sensibly. At the outset, the list compiled and filed according to the corporate records or the records of the debtor's stock transfer agent will constitute the list of stockholders to receive notices. But stock changes hands, and when it comes to voting on the plan, it is only the stockholders of record when the plan is approved who will be included in the computation. When it comes to distribution, the records as they then stand will govern.

There is a built-in protection in rule 10-401(h) for a stockholder whose stock has not as yet been officially transferred of record. Such a person may show that he, and not the record holder of the security, is entitled to be treated as the holder of record, by filing with the court proof thereof. Prior to voting or distribution, the trustee would interpose objections to duplicated or overlapping claims, so there would be but one vote and one distribution.

One more thing should be discussed before temporarily leaving creditors and stockholders. Although the court fixes a bar date for filing claims, it is not set in concrete terms as is the case in ordinary bankruptcy, and the court may still enlarge the time under Bankruptcy Rule 906(b). The Advisory Committee took special pains to point out in the Note to rule 10-401 that the entire policy of chapter X generally is to preserve rather than to forfeit rights. It is now time to leave the creditors and stockholders and return to the plan; however, these parties in interest will be discussed again when the method of computing acceptance of the plan is addressed.

XI. THE PLAN

A. *Filing—Rule 10-301*

It has already been mentioned that the initial burden of filing a plan falls on the trustee. Rule 10-301(b) requires the judge to fix a time for the trustee to file a plan or a report as to the reason why a plan cannot be formulated. Rule 10-208(a)(9) makes it the trustee's duty to file a plan or report within the time fixed. It also will be recalled that rule 10-208(a)(8) imposes a duty on the trustee to give creditors and stockholders notice so that they may submit plans or suggestions for plans to him within the time fixed by him. Creditors and stockholders must be given at least 20 days notice of the date so fixed by the trustee.⁴⁴

44. Bankruptcy Rule 10-209(b)(7).

The submission of plans or suggestions for plans to the trustee is not to be confused with the filing of plans with the court. The creditors and stockholders may submit their ideas to the trustee, but they may not file a plan with the court until expiration of the time for the trustee to file his plan or his report as to why he cannot do so. This privilege represents a departure from sections 167⁴⁵ and 170⁴⁶ of the Act *which do not permit parties other than the trustee to file plans*. But since the trustee files his plan first, after he has screened all suggestions he may receive, it is thought that there is sufficient safeguard against a single party taking control of the reorganization process.

Under rule 10-301(c)(2), a debtor left in possession must, within the time fixed by the court, file a plan or a report stating why one cannot be formulated. If an examiner is appointed, and is directed to file a plan, the initial burden of doing so falls upon him. Where the debtor is left in possession, however, a plan may be filed with the court by any creditor, stockholder, or indenture trustee at any time before the conclusion of the hearing on the plan held pursuant to rule 10-303(a).

B. *Hearing—Rule 10-303(a)*

Creditors, stockholders and other interested parties must be given at least 20 days notice of the hearing on the plan.⁴⁷ The purpose of the hearing, as specified in rule 10-303(a), is to consider the plan, the substituted plan or plans, any objections or proposed modifications thereto, or the reasons given as to why a plan cannot be formulated.

C. *Submission to the SEC—Rule 10-303(b)*

If the debtor's liabilities are \$3 million or more, the court is required to send *those plans it deems worthy of consideration* to the SEC. If the indebtedness is less than \$3 million, the court *may*, at its option, send the plans worthy of consideration to the SEC to aid it in formulating its advisory report. If a plan is submitted to the SEC, the court fixes a reasonable time for the SEC to file a report together with a summary thereof and adjourns the hearing on the plan to a date subsequent to the date fixed for the filing of the SEC advisory report and summary.

45. 11 U.S.C. § 567 (1970).

46. 11 U.S.C. § 570 (1970).

47. Bankruptcy Rule 10-209(b).

D. *Approval—Rule 10-303(c)*

If there is no referral to the SEC, the court is required to rule on approval of the plan at the hearing on the plan “or thereafter.” The words “or thereafter” mean that the court does not have to keep the hearing open and adjourn it from time to time until it rules. Instead, the court may conclude the hearing, reserve decision, and rule at a later date. If, on the other hand, there was a referral to the SEC, the hearing is resumed either after the SEC has filed its report, notified the court that no report will be filed, or failed to file a report within the time required—whichever occurs first. The court may then rule on the plan at the resumed hearing “or thereafter.” If additional evidence is received at the resumed hearing, the court may resubmit the plan or plans to the SEC for a supplemental report.

The rules do not presume to prescribe the requirements for approval of the plan. Those requirements are in the statute. Section 174⁴⁸ provides that the court shall enter an order approving the plan or plans which in its opinion comply with the provisions of section 216⁴⁹ and which are “fair and equitable, and feasible.” What is “fair and equitable and feasible”? Volumes can be written about the “fair and equitable doctrine.” Since the rules are confined to procedural matters, discussion of the doctrine in this context would be inappropriate. In any event, on approval of a plan or plans, the court is required to fix a time within which creditors and stockholders may accept or reject such plan or plans, and *may* fix a subsequent date for a hearing on confirmation.⁵⁰

E. *Transmission to Credits and Stockholders—Rule 10-303(e)*

In order to permit affected creditors and stockholders to make an informed judgment concerning their acceptance of a plan, they must receive not only a copy of the plan or plans and a summary thereof (unless the court directs that they receive only the summary), but also various other documents. In fact, they receive an extensive package. Rule 10-303(e) requires transmittal to the affected creditors and shareholders of: (1) the plan and summary thereof; (2) a summary of the opinion of the court approving the plan or plans—such summary to be approved by the court; (3) a summary of the SEC’s prepared report; (4) the notice of the time

48. 11 U.S.C. § 574 (1970).

49. 11 U.S.C. § 616 (1970). This section sets forth the mandatory and permissive provisions of a plan.

50. Bankruptcy Rule 10-303(d).

within which acceptance or rejection may be filed; (5) notice of the date fixed, if any, for hearing on confirmation; and finally, (6) a form of ballot conforming substantially to Official Form No. 10-7.

Note that the court may direct that the full opinion of the court and report of the SEC be transmitted in place of, or in addition to, the summaries. If only summaries of any of the documents are transmitted, the full plan, opinion of the court and report of the SEC must be furnished upon request without charge.⁵¹

One caveat with respect to acceptance or rejection is in order. Neither may be solicited in any form or guise without consent of the court until *after* entry of the order approving the plan and transmittal of the plan to creditors and stockholders.⁵² The penalty for failure to comply with this restriction can include invalidation of the acceptance and disqualification from being heard or from intervening in the case.⁵³

F. *Acceptance or Rejection—Rule 10-305*

Rule 10-305 provides that: (1) any creditor whose claim is deemed allowed pursuant to rule 10-401(c) or whose claim has been allowed by the court; (2) any creditor who is a *security holder of record* at the date of entry of the order approving the plan whose claim has not been disallowed; and (3) any stockholder of record at the date of approval of the plan whose stock interest has not been disallowed, may accept or reject a plan within the time fixed. If a claim is under objection, the court may nevertheless *temporarily allow* it to such extent as the court may deem proper for voting purposes.

Under section 179 of the Act,⁵⁴ creditors or stockholders who are *not affected* by the plan are not counted in computing the requisite acceptances; and rule 10-305(a) does not confer that right on *unaffected* creditors and stockholders. Moreover, under section 179, acceptance by stockholders is not necessary if the debtor is found to be insolvent. The rules also reflect this. Although section 137 of the Act⁵⁵ says that an answer to a chapter X petition may be filed by a stockholder if the debtor is not insolvent and the rules change that by permitting a stockholder to file an answer in any case, when it comes to voting, the rules make no change in the statutory disqualification from voting of stockholders where the debtor is insol-

51. Bankruptcy Rule 10-303(e).

52. Bankruptcy Rules 10-303(f), 10-304.

53. Bankruptcy Rule 10-211(b).

54. 11 U.S.C. § 579 (1970).

55. 11 U.S.C. § 537 (1970).

vent. Note also that an indenture trustee is not considered a creditor for voting purposes.

G. *Computation of Acceptances—Rule 10-305(e)*

Rule 10-305(e) is very complicated—but for good reason. When the Advisory Rules Committee members came to deal with the computation of requisite majorities, they wanted to circumvent the statutory provisions of section 179⁵⁶ whereby the requisite majorities for acceptance are based on the total number of claims and stock interests filed and allowed, and whereby failure to accept a plan by a creditor or stockholder who filed a proof of claim or interest is tantamount to a rejection. The Committee thought that no effect should be given to *non-action*, and that in order to be counted, the creditor or stockholder should be required to take affirmative action by casting a ballot. Thus, rule 10-305(e) was originally drafted to provide that only those votes *actually cast* are to be counted. If a creditor or stockholder wished to participate in the determinative process, he had to file a written acceptance or rejection. If the claims of creditors, filed or allowed, totalled \$10 million, and claims totalling only \$1 million cast ballots, it would require acceptance by claims totalling two-thirds of \$1 million, and not two-thirds of \$10 million. If there were stockholders holding 10,000 shares, and only 1000 shares were voted, acceptance by a majority of the 1000 shares voted would be all that would be required.

When the rules went to the Standing Committee, it was thought that rule 10-305(e) went beyond the rulemaking power, so they left the language as the Advisory Committee had submitted it, but added the words: "*which in no event shall be less than the requisite majorities of the filed and allowed claims and interests.*" This brought about an anomalous position: creditors listed by the trustee were advised that they need not file claims; however, the rule also says "if you do not file a claim, your vote will not be counted." Moreover, the few who did file claims would be able, by non-action, to bar acceptance. This is the very situation the Committee was seeking to avoid.

To cure this defect, further language was added which provides that the *filing of an acceptance or rejection* by a creditor or stockholder shall be deemed to constitute the filing of a proof of claim or stock interest for the purpose of computing the majorities required by the Act.

56. 11 U.S.C. § 579 (1970).

In summary, the base from which to compute the requisite majorities will be the total number of claims actually filed and allowed (not including those merely listed by the trustee pursuant to rule 10-108) plus the total number of acceptances and rejections filed by those who did not file a proof of claim or stock interest. Of this total, acceptance by creditors holding two-thirds of the debt and by stockholders holding a majority of stock is required. To illustrate: assume that the trustee listed creditors whose claims aggregated \$10 million, but only claims aggregating \$1 million were filed and allowed. Assume then, that acceptances or rejections aggregating \$8 million were filed by creditors who did not file proofs of claim. These creditors are deemed to have filed claims. The \$8 million is added to the \$1 million representing filed claims, and now acceptances aggregating two-thirds of \$9 million will be required. It is the same with respect to stockholders. If proofs were filed on behalf of 100,000 shares, and ballots were cast by those holding 700,000 shares who did not file proofs, a majority of 800,000 shares would be required.

Thus, merely returning a ballot is equivalent to filing a claim; and if the amount of those who voted but did not file proofs is added to those who filed proofs, the total is equal to the base figure employed in determining the requisite majority for acceptance.

A final detail is worth mentioning before moving on: the rules do not contemplate a hearing to determine acceptances. That can be done at the hearing on confirmation. Before discussing confirmation, however, a brief reference to modification of a plan is in order.

H. *Modification—Rule 10-306*

Prior to approval of a plan, only a party who filed a plan in accordance with the rules may file a modification of that plan. At the hearing to consider approval of a plan (or within such further time as the court may allow) any party in interest may file a modification or a substitute plan. *After approval of a plan* (this may be before or after confirmation), a party in interest may propose a modification *only with leave of the court* and for *cause shown* with this restriction: after a plan has been substantially consummated (rule 10-306(c)(2) outlines when a plan is deemed to be substantially consummated), a plan may not be modified to materially and adversely affect participation provided for any class of creditors or stockholders by the plan.⁵⁷

For the purpose of this discussion, it is assumed that the plan

57. Bankruptcy Rule 10-306(c)(1).

has *not* been substantially consummated. If the proposal does not materially and adversely affect the interest of creditors who have not accepted it in writing, the modification is deemed accepted by creditors and stockholders who have previously accepted the plan. This follows the chapter XI pattern.

On the other hand, if the court finds that the proposed modification does materially and adversely affect creditors and stockholders who have not accepted it in writing, a four-step procedure is outlined: (1) the court fixes a date for a hearing to consider the modification; (2) it enters an order that any creditor or stockholder who accepted the plan and who fails to file a written rejection within a reasonable time fixed in the order is deemed to accept the plan as modified—this too follows the chapter XI pattern; (3) the court must order mailing notice of the order and of the date fixed for the hearing on approval of the modification, accompanied by a copy or summary of the proposed modification—this mailing must be at least 20 days before the date fixed for filing rejections of the modification; and finally, (4) at least 20 days before the date fixed for the hearing, the court must transmit a copy of the proposal to the SEC with notice that the Commission may file a supplementary advisory report *at or before the hearing*.⁵⁸ The requirements for confirmation of the modified plan are no different than confirmation of a plan without modification with the exception that the court may, at the hearing on approval of the modification, rule on confirmation of the entire package — the modified plan — *and the notice of the hearing must so indicate*.⁵⁹

1. Confirmation—Rule 10-307

Under section 179,⁶⁰ the court must determine if the requisite acceptances have been received before it fixes a date for the hearing on confirmation. The scheme of the rules changes the procedure so that the date for confirmation may be fixed before acceptance has been obtained; and, as already mentioned, the court may do so at the time the plan is approved. Rule 10-303(d) states that “on approval” of a plan, the court “shall” fix a time within which a plan may be accepted or rejected and “may” fix a date for a hearing on confirmation. It will be assumed that the order approving the plan did fix a date for the confirmation hearing. Objections to confirmation must be filed at least 10 days prior to the hearing unless the

58. Bankruptcy Rule 10-306(b).

59. *Id.*

60. 11 U.S.C. § 579 (1970).

court extends the time. A copy of the objections must be served on the trustee or debtor in possession and the objection constitutes a "contested matter" governed by Bankruptcy Rule 914.⁶¹

The debtor, creditors, stockholders, and other parties in interest must get at least 20 days notice of the hearing.⁶² At the confirmation hearing, the first order of business is determination of acceptance. Before going further it must be found that the requisite majorities have been obtained. It will be recalled that no separate hearing on acceptance is contemplated by the rules. Another issue arising at the hearing is the disposal of any controversy over whether any creditor or stockholder or any class thereof was "affected" thereby. Other issues arising at the confirmation hearing include whether any acceptance or rejection of a plan or modification was not in good faith⁶³ and whether any class of affected creditors or stockholders not accepting the plan by the requisite majority is adequately protected as provided in sections 216(7),(8) of the Act.⁶⁴ Of course, any timely objection to the plan would have to be tried and determined.

The rules do not prescribe the findings that must be made in order to rule on confirmation; that is a subject beyond the rule-making power. Thus, reference must be made to the statute. The Note to rule 10-307, however, points out that the court must be satisfied that there is compliance with section 221⁶⁵ of the Act. This includes a finding that the plan is *fair and equitable and feasible*. Although the court must make that finding before it may approve a plan, it must once again find that the plan is fair and equitable and feasible in order to confirm. Moreover, even though a party in interest objected to approval on the ground that the plan was not fair and equitable, he is not foreclosed from objecting to confirmation on the very same ground.

In order to confirm, section 221⁶⁶ of the Act also requires that the court be "satisfied" that the provisions of sections 156 through 180,⁶⁷ that section 199⁶⁸ (which deals with the situation where the United States is a secured or unsecured creditor or stockholder) and that article X (which sets forth the mandatory and permissive provisions of a plan) have all been complied with. The court must find

61. Bankruptcy Rule 10-307(a)(1).

62. Bankruptcy Rule 10-307(a)(2).

63. Bankruptcy Rule 10-305(d).

64. 11 U.S.C. §§ 216(7), (8) (1970).

65. 11 U.S.C. § 621 (1970).

66. *Id.*

67. 11 U.S.C. §§ 556-80 (1970).

68. 11 U.S.C. § 599 (1970).

that the proposal and acceptance of the plan are in good faith and have not been made or procured by means or promises forbidden by the Act; that all payments made or promised by the debtor or a corporation issuing securities or acquiring property under the plan, or by any other person, for services or reimbursement for costs and expenses in or in connection with the plan and incident to the reorganization have been *fully* disclosed to the court and are reasonable, or, if to be fixed after confirmation, will be subject to court approval; that the identity, qualifications and affiliations of persons to be directors, officers, or voting trustees upon consummation have been fully disclosed, and that the appointment of such persons is equitable, compatible with the interests of creditors and stockholders, and consistent with public policy. That is quite a bundle of findings, and *it is not pro forma*. The court must exercise an intelligent, informed and independent judgment; and it is difficult to see how it can be done without taking testimony. In any event, the rules do not attempt to intrude into this area other than to set up the procedure for the hearing and the giving of notice. Note this, however: if more than one plan has received the required acceptances, in deciding which one to confirm, the court shall consider the preferences indicated by creditors and stockholders who accepted more than one plan and who indicated their preferences among the plans so accepted.⁶⁹

J. *Distributions and Consummation*

Of course, while rehabilitation is the goal of the case, distribution is what most concerns creditors and stockholders even though they do have an interest in revival of a debtor with whom they can do business in the future. Between the filing of the chapter X petition and confirmation of a plan, a great deal of time will have elapsed, and distribution under the plan should be made at the earliest possible time after confirmation. Under rule 10-405(a) the earliest date is when the order confirming the plan "becomes final." That is, of course, when the time to appeal from that order has expired. At that point, distribution should be made as provided in the plan to stockholders and holders of other securities of record whose claims have not been disallowed at the date the confirmation order becomes final, and to creditors and indenture trustees whose claims have been allowed. Because securities may have been traded in the interval between petition and confirmation, distribution to

69. Bankruptcy Rule 10-307, Advisory Comm. Note.

stockholders and other security holders is determined from the records of a stock transfer agent, registrar, or indenture trustee as of the date when the confirmation order becomes final.⁷⁰ Duplication of claims could occur where an indenture trustee files claims and one of the debenture holders also files a claim. It is up to the trustee to see to it that a single distribution is made. In this situation, the claim of the indenture trustee should be reduced or disallowed *pro tanto*.⁷¹

When a plan requires the presentment or surrender of securities as a condition of participation under the plan or confirmation, the court is required to enter an order—on such notice to all affected parties as the court may direct—fixing a time not less than 5 years after the final decree within which such persons shall present or surrender their securities, failing which, they shall be barred from participating in the distribution.⁷² Section 204 of the Act⁷³ is permissive in this respect, while rule 10-405(b) is mandatory except that the court has discretion in a proper case to make the bar date longer than 5 years after final decree.

Rule 10-309(a) gives the court broad authority to make a variety of orders that may be necessary or useful in aid of consummation: it may fix the *time and manner for deposit of cash and other consideration under the plan*; direct the debtor, trustee, mortgagees, indenture trustees, and other necessary parties to *execute and deliver instruments* necessary to effect retention or transfer of property dealt with under the plan and to perform other acts including the *satisfaction of liens*.

When the plan has been consummated, the court is required to enter a final decree which must contain provisions: (1) stating the effect of confirmation and consummation on the creditors and stockholder (the rules do not describe the effect of confirmation and consummation; therefore, the effect remains as expressed by section 228(1) of the Act;⁷⁴ (2) discharging the trustee; (3) making such provisions by way of injunction or otherwise as may be equitable; and (4) closing the estate.⁷⁵

XII. DISMISSAL AND CONVERSION TO BANKRUPTCY—RULE 10-308

Provision is made for dismissal or conversion to bankruptcy

70. Bankruptcy Rule 10-405, Advisory Comm. Note.

71. *Id.*

72. Bankruptcy Rule 10-405(b).

73. 11 U.S.C. § 604 (1970).

74. 11 U.S.C. § 628(1) (1970).

75. Bankruptcy Rule 10-309(b).

since all chapter X cases do not move smoothly toward confirmation and consummation. The provisions of sections 236⁷⁶ and 237⁷⁷ of the Act, which deal with dismissals and adjudications, are now embodied in Rule 10-308. The procedures for conversion to bankruptcy contained in section 238⁷⁸ of the Act are now found in Bankruptcy Rule 122, where procedures for conversions of all chapter cases—X, XI, XII and XIII—are collected and treated in one *uniform* rule. So, if one wants to know what happens when any chapter X case is converted to bankruptcy, he should look not to the chapter X rules, but to Bankruptcy Rule 122.

Under rule 10-308(a) upon the occurrence of certain events, the court is required to enter an order after hearing on at least 20 days notice: (a) dismissing the case; or (b) adjudicating the debtor a bankrupt if it has not been so adjudged; or (c) directing that the bankruptcy case proceed; or (d) with the consent of the debtor, directing that the case proceed under chapter XI, if it is "in the best interest of the estate and *appropriate under the Act.*" Note the language "appropriate under the Act." An illustration of "appropriate" would be where an involuntary chapter X petition had alleged something *other* than an act of bankruptcy. In that case the appropriate relief would be dismissal rather than adjudication, absent other factors. Five grounds for such action by the court are set forth in rule 10-308(a): (1) if no plan has been proposed within the time fixed or extended; or (2) if no proposed plan has been *approved* and no further time is granted for proposal of a plan; or (3) if no proposed plan is *accepted* within the time fixed or extended; or (4) if *confirmation is refused* and no further time is granted to propose other plans; or (5) if a confirmed plan is not *consummated*.

Rule 10-308 does not apply to an answer to a petition seeking dismissal on the merits.⁷⁹ *It is applicable only after the chapter X petition has been approved.* Where the court refuses to approve the petition, it has only the option of dismissing the case or permitting the petition to be amended. After approval of the petition, any party in interest has standing to make the application for relief under Rule 10-308.

The fifth ground for dismissal or conversion under rule 10-308 is failure to consummate. There is no time limit in the Act or rules during which a plan must be consummated, and each case must be

76. 11 U.S.C. § 636 (1970).

77. 11 U.S.C. § 637 (1970).

78. 11 U.S.C. § 638 (1970).

79. Bankruptcy Rule 10-308, Advisory Comm. Note.

considered in the light of its own circumstances. But both the Act and the rules contemplate that an end should be put to the case when, in the opinion of the court, there appears little likelihood that the plan will be consummated.⁸⁰

80. *Id.*