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AgFeed Resolves Objections To Win Ch. 11 Plan Confirmation

By **Matt Chiappardi**

Law360, Wilmington (November 04, 2014, 8:19 PM ET) -- A Delaware bankruptcy judge confirmed AgFeed Industries Inc.'s heavily negotiated Chapter 11 liquidation plan Tuesday, 16 months after the company initially sought court protection, after the hog producer's estate settled nearly all of the objections to its strategy.

AgFeed was originally scheduled to go before the court Oct. 27 to confirm a plan that aims to set up a liquidating trust to divvy out funds from settlements and proceeds remaining from the company's two bankruptcy sales, but the hearing was put off for a week while the debtor continued to negotiate with several objecting parties.

The extra time bore fruit, and the debtor was able to settle most of the objections to its plan, including forming a deal with **certain former top brass** that will partially cover the costs of anticipated litigation connected to an \$18 million **settlement** with the U.S. Securities and Exchange Commission, itself a major component of the plan, over alleged accounting fraud.

"I am satisfied the debtor has carried its burden," U.S. Bankruptcy Judge Brendan L. Shannon said from the bench. "I will approve the requested relief and confirm the plan today."

AgFeed attorney Robert S. Brady of Young Conaway Stargatt & Taylor LLP said in court that he expects the plan, which he has previously called an "incredibly delicate balance of competing interests," to be effective within a week.

The SEC settlement — born out of a lengthy investigation and subsequent **lawsuit** alleging certain of AgFeed's former principals engaged in a scheme that inflated revenues by nearly \$240 million in order to boost the company's stock price — has been described as the linchpin of the plan, and gives the agency an allowed \$18 million claim that will be paid in cash out of the proceeds from the debtor's two bankruptcy sales, according to AgFeed's attorneys.

The SEC is expected to contribute \$12.5 million to the liquidating trust solely for all holders of equity interests, and distribute the remaining \$5.5 million at its discretion.

The plan also includes an earlier \$7 million **deal** to settle a shareholder class action, launched in 2011 in Tennessee federal court, to be paid by the debtor and its insurers, according to court records.

AgFeed, which raised hogs in the China and the United States, **filed for Chapter 11 protection** in July 2013 after a dispute and subsequent arbitration award favoring its

then-primary business partner Hormel Foods Corp. threw its secured loan into default, the debtor has said in court documents.

During the case, the debtor **sold its U.S. operations** in a multiparty deal worth nearly \$80 million, proceeds from which were used to pay off a \$68.5 million loan to Farm Credit Services of America. AgFeed also sold its Chinese assets to Hong Kong firm Good Charm International Development Ltd. **in November 2013** in a deal valued at roughly \$45 million, according to court records.

With confirmation behind it, the focus of the case may now turn to a **major adversary action** the official committee of equity security holders lodged last week, accusing Hormel of making false representations that the committee claims induced AgFeed to purchase the unit that became AgFeed USA and began the then-Chinese firm's expansion into the United States.

The equity committee claims Hormel had told AgFeed the unit, which had a deal to raise pigs that would be delivered to the food giant, did not breach any agreements with it, but then turned around about two years later and made claims to the contrary in arbitration after the debtor made the purchase.

The subsequent arbitration award — which found partially in favor of both parties but yielded a monetary award to Hormel — and its effects was one of the factors AgFeed cited in its bankruptcy petition.

Hormel has called the claims “baseless” and vowed to vigorously defend itself.

AgFeed is represented by Robert S. Brady, Donald J. Bowman Jr., Ian J. Bambrick, Ashley E. Markow and Elizabeth S. Justison of Young Conaway Stargatt & Taylor LLP.

The equity committee is represented by Rafael X. Zahraiddin-Aravena and Eric M. Suttly of Elliott Greenleaf as well as Aaron L. Hammer and Mark S. Melickian of Sugar Felsenthal Grais & Hammer LLP.

The case is In re: AgFeed USA LLC et al., case number 1:13-bk-11761, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Stewart Bishop, Jamie Santo and Jeff Sistrunk. Editing by Emily Kokoll.

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