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# THE ALTMAN GROUP



*Bankruptcy Balloting  
for Public Securities  
and Other Creditors*

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**T**he principals and staff of The Altman Group make up one of the most experienced teams in the United States concentrating on balloting and related matters. With experience on nearly ninety corporate bankruptcy solicitations, it is likely that we have handled any situation a debtor or plan proponent may face -- and have the expertise to effectively resolve any unusual or unanticipated problems.

In fact, the voting methodology used for public securities classes in virtually every public company bankruptcy case since the early-1990's was developed by Ken Altman in direct response to the late 1990 decision by Judge Abramson which voided the first Southland Corporation vote.

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## OVERVIEW

*A debtor may require solicitation assistance in a number of situations, such as when:*

- *There are more than a small number of creditors;*
- *There are a modest number of creditors holding their claims in many classes;*
- *Publicly traded securities are involved;*
- *A large number of trade creditors or litigation claimants are involved; or*
- *The vote needed to pass the plan may be difficult to secure based on known opposition or an unusual concentration of the dollar value of claims.*

*This document concentrates on issues related to voting by public security holders.*

### PUBLIC SECURITIES

Publicly traded securities often present special problems because of the multiple layers of ownership involved when bank and brokers hold shares for their customers. This form of ownership is commonly known as “Street” name holdings. The balloting process must be designed to facilitate voting by the ultimate beneficial owners, while still working within the framework accepted by the brokers and banks who are custodial holders of the securities. Although the bankruptcy code does not provide clear guidance on this issue, failure to follow appropriate procedures for the Street may result in problems, including issues with numerosity and duplicate voting.

The staff of The Altman Group have earned a reputation for bridging the complexities of the solicitation process with appropriate bankruptcy practices and have had significant experience in all related matters.

For example, in response to the issues raised in the Southland case (1990), Kenneth Altman developed the ballot - master ballot system -- first used for JPS Textile’s first pre-packaged bankruptcy filing in early 1991. Based on Judge Abramson’s then just released decision in the Southland case, JPS needed to know the number of bondholders voting through broker and bank positions (information the firms themselves cannot provide when voting on behalf of customers who have positions with more than one custodial firm or customers who may have multiple Street name positions or positions at more than one firm, or Street and record positions) and to ensure that no holder was voting more than once in the same class. The ballot - master ballot voting system deals effectively with these issues and is now the standard for soliciting votes in a bankruptcy

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context from publicly traded debt securities and, in a slightly modified form, equity securities.

The Altman Group can also provide assistance with other special voting issues, such as:

- bearer securities, in which there are no “registered” owners; and
- plans with an election to be made regarding consideration.

A more detailed review of the way Street name securities are held begins later in this document.

## CREDITOR ISSUES

When a large number of creditors are entitled to vote on a Plan, The Altman Group can provide assistance with the large numbers of calls that can be anticipated once the plan materials have been mailed.

Calls must be handled carefully, answering questions directly from materials approved by the bankruptcy court. Unless a specific firm is designated in the plan materials, calls will often be directed to the attorneys on the case (who may not wish to devote the resources necessary to answer a large number of calls) or to the debtor (whose employees may not know the correct way to respond to many of the questions).

The Altman Group handles all inquiries carefully, and consults with counsel or the debtor, as appropriate, on issues not covered by the materials. This is of significant value to the debtor, ensuring that the vast majority of calls are handled efficiently, while calls best handled by debtor’s counsel or an appropriate committee representative are directed to them.

In addition, The Altman Group has substantial experience in dealing with the special balloting procedures that may be needed for classes with large numbers of class action or litigation claimants.

## SECURING THE VOTE

In certain situations, a Debtor may wish to take steps to encourage creditors to vote. Based on the situation, we complete an analysis of the likely votes in each relevant class and recommend steps to maximize the return of ballots, including calls to creditors.

Here, too, any communications with creditors should include only language that has been approved by the court. However, approved follow-up steps can boost the rate of return above that which would normally be expected.

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## PLAN SOLICITATIONS

*The Altman Group can provide assistance in communicating with security holders and other creditors, and obtaining and tabulating their votes.*

### BALLOTING PROCEDURES

- Review procedural orders relating to the distribution of material, voting, and tabulation.
- Review the disclosure statement and forms of ballots, particularly as they may relate to voting procedures.
- If beneficial owners of securities are being solicited, provide counsel with regard to ballots and master ballots, as well as the various options of custodial holders to convey votes (i.e. master ballots and “prevalidated” ballots).
- Develop specific procedures needed for unusual circumstances, such as bearer bonds or product liability claims.

### DISSEMINATING DOCUMENTS

- Help the debtor obtain accurate mailing records for debt securities, equity securities, and other creditors.
- Mail materials to unsecured or other creditors and record holders of any debt or equity securities entitled to vote and/or receive notice; distribute materials to beneficial owners in “Street” name.
- Provide careful and continuous oversight of the mailing process.
- Prepare a certificate of service for filing with the court.

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## DISTRIBUTING PLAN DOCUMENTS TO “STREET” NAME HOLDERS

The Altman Group distributes plan documents to banks and brokerage firms to facilitate voting by creditors and equity interest holders with securities in Street name. While the broker or bank holding the securities is sometimes considered to be the “custodial holder” or “record holder,” the party whose name appears on the brokers’ records, their customer, is known as the “beneficial owner.”

*This difference is one of the most important elements of any solicitation involving publicly traded securities. A thorough understanding of the bankruptcy process is required, as well as familiarity with the mechanics and complexities of Street name holdings.*

The Altman Group:

- Gives appropriate notice of the record date to custodial holders (or their agent);
- Can make certain that each custodial holder has provided information on the number of beneficial owners holding the security or securities in question;
- Prepares a database of custodial holders for mailing information and service lists
- Works with the debtor to obtain appropriate record date information;
- Drafts the instruction letter to be included with the materials delivered to record date custodial holders;
- Distributes materials to all custodial holders, and follows-up to be certain it has been received and forwarded to beneficial owners;
- Prepares the special bulletin included with master ballots delivered to the party responsible for voting;
- Distributes master ballots to custodial holders;
- Calls the appropriate bank or brokerage firm contacts to assure the issuance of master ballots on behalf of beneficial owners.

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## TALKING WITH CREDITORS

- Receives telephone inquiries from creditors or equity interest holders who have questions about the plan or voting procedures. In many instances, the creditor is seeking information about plan treatment or completing the ballot. The Altman Group confines its answers to information contained in approved documents, and seeks guidance from counsel on matters not covered.
- Handles requests for documents and information from brokerage firms, banks, institutional owners, and other interested parties.
- Makes outgoing calls to some or all known creditors to confirm that they have received the material, and to answer questions about the voting process (confining answers to information contained in the Plan documents);

## TRACKING VOTES

- Receives ballots and master ballots from Street name holders (votes cast by each custodial holder are monitored, and unvoted positions pursued);
- Ballots and master ballots are reviewed for accuracy, and any questions or issues resolved with the custodial holders;
- Where large creditors may be holding securities in Street name, positions held by the custodial holder are carefully monitored;
- Where unsecured creditors and other classes of claimants are an important element of the solicitation, voted and unvoted positions are tracked closely.

## TABULATING BALLOTS

- Tabulating ballots and master ballots representing publicly traded securities according to tabulation procedures approved by the bankruptcy court (or counsel, in a prepackaged solicitation);
- Tabulating ballots of other classes of creditors entitled to vote, according to approved tabulation procedures;
- Preparing comprehensive tabulation reports for each class, with separate reports when there is more than one security within a class.

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- Preparing the final report and vote certification to be filed with the court.

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## HOW STREET NAME SECURITIES ARE HELD

*Understanding “Street” name mechanics is imperative in soliciting bankruptcy plan approvals. The following is a step-by-step outline of how securities in Street name are held, starting with the record holder list (maintained by the indenture trustee or transfer agent) and progressing through multiple layers of sub-registration until the actual beneficial owner is reached.*

### LIST OF RECORD HOLDERS

- Maintained by transfer agent or indenture trustee.
- Covers all of the outstanding balance of shares or principal amount.
- Individual holders comprise the majority of the positions included on a typical list.
- **Cede & Co.** is usually the largest position, often representing more than seventy-five percent of the outstanding balance of shares or principal amount.

### CEDE & CO.

- Cede & Co. is the nominee name for The Depository Trust Company (“DTC”).
- DTC was formed in the 1960’s by brokers and banks, in conjunction with the New York Stock Exchange, to hold securities in a common location.
- Its purpose is to facilitate electronic transfers of securities between member firms (known as “participants”), reducing the physical movement of securities.
- Cede does not vote securities for its participants.

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## CEDE & CO. - continued

- While issuers are required to send one set of material to Cede (because it is a record holder), Cede will not disseminate materials to participants.
- With appropriate notification, Cede will forward to the corporate issuer a list of participants on the record date, along with an “Omnibus Proxy” assigning voting rights to the participants.
- The Cede list shows the number of shares or principal amount of the securities held by each bank and broker participant, but NOT the number of holders the banks and brokers represent.

## CUSTODIAL HOLDERS: BANKS AND BROKERAGE FIRMS

- Cede participants -- the banks and brokerage firms holding the securities -- are *custodial holders* or *record holders* for the *beneficial owners* (their clients).
- The custodial holder is also the conduit between the issuer and the beneficial holders.
- Custodial holders must be contacted directly in advance of the record date:
  - to alert them of the voting record date; and
  - to request a count of beneficial owners.
- Because many custodial holders use ADP Proxy Services for their mailings, in many instances the contact is made with ADP rather than the bank or broker.
- ADP needs advance notice of *at least* two business days to be able to set a record date.
- Custodial holders (or ADP, when acting as agent) forward voting material to beneficial owners.

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## TYPES OF BENEFICIAL OWNER ACCOUNTS -- NOBOs AND OBOs

- Non-Objecting Beneficial Owners (or “NOBOs”) are customers whose names are made available under SEC Rule 14b1-c, and can therefore be disclosed to an issuer.
- Objecting Beneficial Owners (or “OBOs”) are customers whose names cannot be disclosed to an issuer.
- NOBO lists can be ordered by the issuer from ADP Proxy Services, the SEC authorized intermediary between firms and issuers.
- NOBO lists reveal the names and positions of all disclosed Street name accounts. However, the list does not identify the firm through which a beneficial owner holds, although totals for each firm are provided.
- NOBO lists cannot be used for voting purposes. (No voting authority is being conferred by the custodial holder -- the broker or bank -- to accept votes directly from NOBO accounts.)
- Custodial holders are prohibited from revealing the names of their clients, except when they are “non-objecting” beneficial owners.

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## TABULATION PROCEDURES FOR PUBLIC SECURITIES

### Record Holders

- “Record holders” are individuals or entities who hold the security in their own name as of the record date. The amount voted by a record holder is checked against the records provided by the trustee or transfer agent. Generally, in the event of a discrepancy between the amount voted and the debtor’s records, the debtor’s records will govern.
- Ballots of debt security holders are cross-referenced for numerosity to determine if a single holder has voted more than one ballot in a class. If so, the tabulation report is adjusted accordingly.

### Custodial Holders

- Votes by custodial holders are submitted on either master ballots or prevalidated ballots.
- When ADP submits a master ballot, it usually attaches a report for each firm that is an ADP client, detailing the votes of each firm’s customers.
- Votes cast by each custodial holder are checked against the total amount of securities held by the firm as of the record date.
- Any conflict or overvote on master ballots or prevalidated ballots is resolved through conversations with the custodial holder.
- If an overvote cannot be resolved, court-approved voting procedures usually call for a proportional reduction of votes so that no more than the total on the company’s records is voted.