# INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 14
# BALLOT FOR ACCEPTING OR REJECTING PLAN

## I. INTRODUCTION

Official Form 14 is used as a ballot for accepting or rejecting the plan(s) of reorganization. The ballot is to be used by general creditors (including secured, priority unsecured, and nonpriority unsecured creditors), bondholders, debenture holders, other debt security holders, and equity security holders who are entitled to vote on the plan(s).

A PERSON ENTITLED TO VOTE ON THE PLAN MUST COMPLETE AND RETURN THE BALLOT IN ORDER TO HAVE THE VOTE COUNT.

## II. APPLICABLE LAW AND RULES

On approval of the disclosure statement, plan proponents may solicit holders of claims or interests for acceptance of a plan. 11 U.S.C. § 1125(b). Unless the court orders otherwise regarding any unimpaired classes of creditors or equity security holders, the debtor in possession, trustee, proponent of the plan, or clerk, as ordered by the court, must mail to all creditors and equity security holders, and to the U.S. trustee, (1) the plan or court approved summary of the plan, (2) the approved disclosure statement, (3) notice of the time within which to file acceptance and rejection of the plan, and (4) other information as the court may direct, including any opinion of the court approving the disclosure statement or court approved summary of the opinion. Rule 3017(d) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") In addition, notice of the time fixed for filing objections to confirmation of the plan and notice of the hearing on confirmation must be mailed to all creditors and equity security holders, and a ballot must be mailed to those entitled to vote on the plan. Fed. R. Bankr. P. 2002(b), 3017(d).

Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization.

Under section 1126(c) of the Code, an entire class of claims is considered to have accepted a plan if the plan has been accepted by creditors that hold: (a) at least two-thirds in amount, and (b) more than one-half in number of allowed claims of the class held by creditors that have accepted or rejected the plan, i.e., creditors that have voted on the plan. A class of equity security interests is considered to have accepted a plan if the plan has been accepted by the holders of two-thirds in amount of such allowed interests that have voted on the plan. 11 U.S.C. § 1126(d). Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are considered to have accepted the plan.

Entities entitled to accept or reject the plan must do so within the time fixed by the court. Fed. R. Bankr. P. 3018(a). Subject to Bankruptcy Rule 3018(b), a creditor or equity security holder whose claim is based on a security of record is not entitled to vote on a plan unless they were the holder of record of such security on the date the order approving the disclosure statement was entered. Fed. R. Bankr. P. 3018(a). An acceptance or rejection must be in writing; identify the plan(s); be signed by the creditor, equity security holder or an authorized agent; and conform to the Official Form. More than one plan may be accepted or rejected by the voting person, and if more than one plan is accepted, the voting person may designate a preference or preferences among the plans. Fed. R. Bankr. P. 3018(c). A creditor holding an allowed claim that is partly secured and partly unsecured is entitled to accept or reject a plan in both capacities. Fed. R. Bankr. P. 3018(d).

Bankruptcy Rule 3018(b) allows the acceptance or rejection of the plan before commencement of the case if certain solicitation requirements were satisfied under Bankruptcy Rule 3018(b) and section 1126(b) of the Code.

Section 1127(a) of the Code provides that the plan proponent may modify the plan at any time before confirmation, and the modified plan will become the plan. But the plan as modified must meet all the requirements of chapter 11. Bankruptcy Rule 3019 provides that, when there is a proposed modification after balloting has been conducted and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification shall be deemed to have been accepted by all creditors who previously accepted the plan. If it is determined that the proposed modification does have an adverse effect on the claims of the nonconsenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for approval, Bankruptcy Rule 3016(b) requires that every proposed plan and modification be dated and identified with the name of the entity or entities submitting such plan or modification. When competing plans are presented and meet the requirements for confirmation, the court must consider the preferences of the creditors and equity security holders in determining which plan to confirm.

The Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128. At or after the confirmation hearing, the court may confirm the plan and make it binding on all creditors and equity security holders, if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class of creditors and the holders of two-thirds in amount of equity security interests in each class voting on the plan. Before confirmation can be granted, the court also must be satisfied that there has been compliance with the other requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find the confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a "cramdown."

In addition to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk's office.

## III. DIRECTIONS

1. Directions or blanks for the proponent (the person who filed the disclosure statement and plan of reorganization) to complete the text of the ballot are in italics and enclosed in brackets on the Official Form. Only the applicable language from the alternatives shown on the Official Form should be included in the ballot, but the ballot may be modified to the particular requirements of the case. See Fed. R. Bankr. P. 9009. The form is designed to be customized by the proponent so that each class of creditor, debt security holder, or equity security holder under the plan will receive a ballot that only applies to that class.

2. If the plan provides for creditors in a class to have the right to reduce their claims so as to qualify for treatment given to creditors whose claims do not exceed a specified amount, the ballot should make provisions for the exercise of that right. See 11 U.S.C. § 1122(b).

3. If debt or equity securities are held in the name of a broker/dealer or nominee, the ballot should require the furnishing of sufficient information to assure that duplicate ballots are not submitted and counted and that ballots submitted by a broker/dealer or nominee reflect the votes of the beneficial holders of such securities. See Fed. R. Bankr. P. 3017(e).

4. In the event that more than one plan of reorganization is to be voted upon, the form of the ballot will need to be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. See 11 U.S.C. § 1129(c).

5. The proponent should customize the ballot for the class to which the ballot applies before mailing the ballot to a person entitled to vote on the plan. Holders of claims or equity security interests in more than one class may receive, and are entitled to vote, more than one ballot.

6. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

7. The proponent should place the proponent's name and the date the plan was filed with the court on the first line in the spaces indicated.

8. The proponent should indicate on the second line whether the disclosure statement was approved or conditionally approved by the court.

9. The proponent should indicate on the fifth line how a creditor or equity security holder may obtain a copy of the disclosure statement.

10. The proponent should specify in the second paragraph how the claim or equity interest of the person receiving the ballot is classified under the plan.

11. The third paragraph includes the name and address to which persons entitled to vote on the plan are to mail their ballots and the date set by the court as the deadline for returning the ballot.

12. The portion of the text labeled ACCEPTANCE OR REJECTION OF PLAN includes three versions of a statement to be completed by persons entitled to vote on the plan. One version is for holders of secured, priority, or unsecured nonpriority claims. The second version is for holders of bonds, debentures, or other debt securities. The third version is for holders of equity interests. The proponent should include only the applicable language for the person receiving the ballot.

13. General creditors should specify the classification of their claim under the plan and the unpaid amount of the claim in the spaces indicated.

14. Bondholders, debenture holders, and other debt security holders should specify the classification of their debt security under the plan, the principal amount of their claim in dollars, and a description of their bond, debenture, or other debt security in the spaces indicated.

15. Equity security holders should specify the classification of their equity interest under the plan, the number of shares or other interests which they hold, and a description of their equity interest in the spaces indicated.

16. The language following the three alternative statements should be included in all ballots. A person voting on the plan is asked to check only one box, either “Accepts the Plan” or “Rejects the Plan.”

17. A person voting on the plan should date the ballot on the line provided after the word “Dated.”

18. The voting person’s name should be printed or typed on the line after the words “Print or type name.” The voting person is asked to sign the ballot on the line provided after the word “Signature.”

19. If the creditor or equity security holder entitled to vote on the plan is a corporation or partnership, the title of the person casting the ballot on behalf of the corporation or partnership should be inserted on the "title" line. The appropriate address should be placed in the space provided after the word "Address."

20. The proponent should specify the name and address to which the ballot should be returned.

21. After completing the ballot, the person voting on the plan should mail the ballot to the address specified. The date set by the court as the deadline for returning the ballot is stated on the first page of the form.