UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
ADVANTA CORP., *et al.*,	:	Case No. 09-13931 (KJC)
Debtors.[1]	:	(Jointly Administered)
	:	**Re: Docket No. 903**
	:	**Hearing Date: TBD**
	:	**Obj. Deadline: TBD**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION TO EXTEND EXCLUSIVITY AND EXPEDITED MOTION FOR AN ORDER, PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE, (A) TERMINATING THE DEBTORS' EXCLUSIVITY PERIODS, AND (B) AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PROPOSE AND SOLICIT ACCEPTANCES TO A CHAPTER 11 PLAN

The Official Committee of Unsecured Creditors of Advanta Corp. ("Advanta") and its affiliated debtors and debtors in possession (collectively, and together with Advanta, the "Debtors") submit this Objection (the "Objection") to the Debtors' *Motion to Extend Exclusive Periods for Filing a Chapter 11 Plan and Solicitation of Acceptances Thereto* [D.I. 903] (the "Debtors' Exclusivity Motion") and Expedited Motion (the "Motion") for an Order pursuant to Section 1121(d) of Title 11 of the United States Code (the "Bankruptcy Code") (a) Terminating the Debtors' Exclusive Periods to Propose and Solicit Acceptances to a Chapter 11 Plan (the

[1] The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BE Corp., f/k/a BizEquity Corp. (8960), ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Advanta Ventures Inc., BizEquity Corp., Ideablob Corp. and Advanta Credit Card Receivables Corp. commenced their chapter 11 cases on November 20, 2009. All other Debtors commenced their chapter 11 cases on November 8, 2009.

"Exclusivity Periods") and (b) Authorizing the Official Committee of Unsecured Creditors (the "Committee") to Propose and Solicit Acceptances to a Chapter 11 Plan. In support of the Objection and Motion, the Committee respectfully submits as follows:

PRELIMINARY STATEMENT

1. A debtor may not use a chapter 11 plan as a tool to benefit top executives while impairing the rights of all third party creditors. Because that is exactly what the Debtors are doing here, the Committee reluctantly must ask this Court to (a) deny the Debtors' request to extend the Exclusivity Periods and (b) terminate the Exclusivity Periods to allow for simultaneous solicitation of the Committee's alternative plan, so that these estates are not required to bear the costs of an expensive and wasteful process of soliciting votes on a plan which neither the Committee nor unsecured creditors will support and which will not be confirmed.

2. Once it became clear that the Debtors would insist upon proposing a chapter 11 plan (the "Debtors' Plan") that favors the Debtors' insiders at the expense of third-party creditors, the Committee proposed simple plan modifications that would effectively maintain the status quo with respect to the Alter & Rosoff Claims (as defined below). The Debtors responded by cutting off plan negotiations and filing their Plan anyway. The Committee is now compelled to oppose the Debtors' Plan and seek to terminate exclusivity because the Debtors' Plan:

- exculpates insiders from liability arising from potentially valuable claims of the estates against insiders and may impair valid defenses the estates and Trustees[2] may have to challenge, subordinate, offset or otherwise contest the Alter & Rosoff Claims arising out of post-petition actions and omissions that may have advanced and furthered the Alter & Rosoff Claims, [redacted] and that remain the subject of an ongoing investigation by the Committee;

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Debtors' Plan.

- potentially hinders the prosecution of prepetition claims of the estates by omitting language requested by the Committee [redacted] to ensure this Court retains post-confirmation jurisdiction over any claims asserted by liquidating trusts under a confirmed plan; and

- eliminates previously negotiated and agreed upon consent, consultation and approval rights for the Committee with respect to fundamental aspects of the Debtors' Plan (including selection of the Trustees who have discretion to pursue, or *not* pursue, claims against the Debtors' insiders under the Debtors' Plan and to challenge, or *not* challenge, the Alter & Rosoff Claims), leaving unsecured creditors of the Debtors' estates—who are the primary economic stakeholders of the Debtors' estates—with no opportunity to provide input concerning the most important elements of the Debtors' Plan.

3. Significantly, the modifications the Committee proposed to resolve these deficiencies would not in any way prevent Alter and Rosoff from having a full and fair opportunity to pursue their claims and present all arguments they deem appropriate to this Court or prejudice Alter, Rosoff (or the Debtors) in any way. To the contrary, the intent and effect of the Committee's proposals are only to ensure that the Debtors' Plan does not damage the *estates'* ability to defend against the Alter & Rosoff Claims and to preserve the rights of third party creditors. Nevertheless, the Debtors rejected the Committee's proposals [redacted]—let alone explaining how their plan provisions maximize value for *all creditors* of the Debtors' estates. Rather, the Debtors now seek to extend exclusivity and thereby foreclose the opportunity for creditors to vote on an alternative plan that cures the deficiencies of the Debtors' Plan. Under these circumstances, exclusivity should be terminated, not extended.

4. That the Debtors' Plan favors insiders over third-party creditors is no surprise in light of the clear and admitted conflicts that exist between the personal interests of the Debtors' insiders and the interests of the estates and all other creditors. Specifically:

- the Debtors' two controlling insiders, Chairman of the Board and CEO Dennis Alter ("Alter") and Vice Chairman of the Board and President William Rosoff ("Rosoff"), have asserted claims in an aggregate amount of approximately $51.8 million (the "Alter & Rosoff Claims"), which represent approximately one-sixth of the unsecured claims pool in these cases, and

- based on an ongoing investigation, the Committee has informed the Debtors, Alter and Rosoff that the Committee believes the estates may hold potentially valuable claims against insiders and other parties relating to both pre- and post-petition conduct (the "Estate Claims") and that such potential Estate Claims should be fully and fairly investigated to determine whether they should be prosecuted for the benefit of the estates. These Estate Claims are both valuable in their own right and will form substantial defenses to the Alter & Rosoff Claims.

Although Debtors *say* they want to be "neutral" with respect to the Alter & Rosoff Claims, their post-petition actions prove otherwise as the Committee's Rule 2004 examination has confirmed. In fact, the Debtors have acted [redacted] to advance the Alter & Rosoff Claims and hinder investigation and pursuit of the Estate Claims. Moreover, while the Debtors *said* it was in the estates' interest to defer to the Committee's independent investigation of the Alter & Rosoff Claims (which necessarily includes an analysis of Estate Claims), the Debtors have ignored the Committee's numerous requests to take actions simply designed to prevent *enhancing* the Alter & Rosoff Claims or *impairing* the value of the Estate Claims, and thereby maximize the *value* of the estates for the benefit of non-insider creditors. The Debtors' only response has been to propose their plan, which delivers value to insiders at the expense of every other constituency.

5. The Debtors' Board has abdicated its responsibilities in these cases and has lost the faith of the Committee. [redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[3] A true and correct copy of excerpts of the deposition transcript is attached as Exhibit A.

[4] Documents recently produced by the Debtors—though requested by the Committee several months ago—confirm this fact. [redacted]

[redacted]

- [redacted]

6. If the Debtors proceed with solicitation of the Debtors' Plan without taking into account the best interests of creditors of the estates, the Committee—which is unanimous in its loss of confidence in the Debtors' stewardship of the plan process—will have no choice but to oppose confirmation and recommend that unsecured creditors vote to reject the Debtors' Plan. If a second plan proposal and solicitation process is required, it would be an enormous and completely unjustifiable expense in cases in which many unsecured creditors will receive pennies on the dollar. A release valve—termination of exclusivity—is needed to ensure that the estates are not forced to fund back-to-back solicitation processes.

7. The Committee most certainly is not, by making its specific plan proposals, seeking to leverage the plan process to quash preemptively the Alter & Rosoff Claims. The Committee merely seeks to ensure that any plan in these cases truly is "neutral" as to the Alter & Rosoff Claims—*i.e.*, that it preserves the status quo and does not bolster the Alter & Rosoff Claims while foreclosing the rights of third party creditors. It is only because the Debtors seemingly have other interests in mind that the Committee must bring this Motion.

8. The Committee is prepared to propose its own chapter 11 plan that would correct the terms intended to favor the Debtors' insiders. The Committee's plan would largely mirror the Debtors' Plan except for the provisions discussed herein, and solicitation of the Committee's plan could proceed simultaneously with solicitation of the Debtors' Plan to avoid the harm of a

back-to-back solicitation process. Indeed, simultaneous solicitation could be accomplished with a single disclosure statement that explains the limited differences between the plans.

9. This is a liquidation. Unsecured creditors are the only significant constituency, and should be the primary beneficiaries, of these chapter 11 cases. Fair and neutral treatment of the Alter & Rosoff Claims and the Estate Claims inures to the benefit of all creditors. The Debtors should not be permitted to use exclusivity to foreclose other parties from proposing a plan so that the Debtors may proceed unfettered in their efforts to diminish the estates' rights against insiders and other third parties. Instead, the Debtors' Exclusivity Motion should be denied, and exclusivity terminated, so that solicitation of the Committee's plan may proceed simultaneously with solicitation of the Debtors' Plan and unsecured creditors can avoid the unnecessary cost and delay associated with multiple plan solicitations.

BACKGROUND

10. On November 8, 2009 (the "Petition Date"), Advanta and certain other Debtors each commenced a chapter 11 case in this Court by filing a voluntary petition for relief under the Bankruptcy Code, and on November 20, 2009, the remaining Debtors filed chapter 11 petitions. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No examiner or trustee has been requested or appointed in any of the Debtors' chapter 11 cases.

11. On November 19, 2009, the Office of the United States Trustee for Region 3 appointed the Committee in these chapter 11 cases.

12. On February 12, 2010, the Debtors filed their first *Motion to Extend Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereto* [D.I. 269]. On May 18, 2010, the Debtors filed their second *Motion to Extend Exclusive Periods for the*

Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereto [D.I. 528]. On September 3, 2010, the Debtors filed their third *Motion to Extend Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereto* [D.I. 770]. The Committee did not oppose these motions.

13. On November 2, 2010, the Debtors, without the support of the Committee, filed the *Debtors' Joint Plan Under Chapter 11 of the Bankruptcy Code* [D.I. 895] (the "Debtors' Plan"), the *Disclosure Statement for Debtors' Joint Plan Under Chapter 11 of the Bankruptcy Code* [D.I. 896] (the "Disclosure Statement") and the *Motion for an Order (I) Approving the Proposed Disclosure Statement, (II) Approving Notice and Objection Procedures for the Disclosure Statement Hearing, (III) Establishing Solicitation and Voting Procedures, (IV) Scheduling a Confirmation Hearing, and (V) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan* [D.I. 899] (the "Disclosure Statement Motion").

14. On November 5, 2010, the Debtors, again without the support of the Committee, filed their fourth Exclusivity Motion seeking an order for a fourth extension of the Debtors' Exclusivity Periods for an additional 60 days—to January 5, 2011 and March 4, 2011, respectively. Absent an order granting the requested extension, the Debtors' Exclusivity Periods expire on November 5, 2010 and January 3, 2011, respectively.

15. On November 10, 2010, the Committee filed its *Expedited Motion of the Official Committee of Unsecured Creditors to Conduct Examinations of the Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* [D.I. 911] (the "2004 Motion") in connection with the Debtors' Exclusivity Motion and Disclosure Statement Motion (the "Committee's Rule 2004 Examination"). On November 23, 2010, the Court entered the *Order Granting, in Part, the Motion of the Official Committee of Unsecured Creditors for Expedited*

Relief to Conduct Examinations of the Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure [D.I. 948] (the "2004 Order"). Pursuant to the 2004 Order, on November 30, 2010, the Committee took the deposition of Ms. Dunn, an outside director of the Debtors.[5]

I. THE TWO CONTROLLING INSIDERS OF THE DEBTORS HAVE ASSERTED CLAIMS TOTALING $51.8 MILLION AGAINST THE ESTATES

16. Unsecured creditors represent the only significant constituency in these cases.[6] Approximately $249.2 million to $321 million of non-insider unsecured claims have been asserted against the Debtors.[7] The vast majority of these claims are made up of Investment Note Claims and RediReserve Certificate Claims together totaling $140.6 million and Subordinated Note Claims of $96.5 million.[8] In addition, the FDIC holds a contingent claim in the amount of $50 million pursuant to a settlement between the Debtors, the Committee and the FDIC as receiver for Advanta Bank Corp.

17. The remaining claims have been asserted by two of the Debtors' controlling insiders: Dennis Alter and William Rosoff. Alter and Rosoff originally asserted claims of approximately $64.1 million based on multiple prepetition benefits and severance programs under which they are the sole beneficiaries. On October 19, 2010, Alter and Rosoff filed the amended proofs of claims asserting claims of approximately $51.8 million (*i.e.*, the Alter & Rosoff Claims).[9] The Alter & Rosoff Claims represent between 13.9 and 17.2% of the total

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[5] Based upon the testimony given by Ms. Dunn, the Committee decided in the interests of conserving estate resources that a second deposition, even though authorized by the 2004 Order, was not required for purposes of this Objection and Motion.

[6] The total amount of priority claims is estimated as between $80,000 and $189,000, and the total amount of secured claims is estimated as between $55,000 and $66,000. (*See* Disclosure Statement, at p. DS-8-DS-9).

[7] The Debtors project that between approximately $249.2 million and $376.9 million in Claims will be Allowed by the Bankruptcy Court (not including the FDIC Claim). (Disclosure Statement, at p. DS-70).

[8] *Id.* at p. DS-9, DS-10.

[9] [redacted]

unsecured claims pool in these cases. If the Alter & Rosoff Claims are allowed as filed, and the FDIC's contingent claim does not materialize, Dennis Alter—the Debtors' most senior executive, who according to the Debtors' prepetition securities disclosures already received approximately $53.8 million from the Debtors in the four years prior to the Petition Date—would be the largest single beneficiary of these chapter 11 cases.

18. When the Alter & Rosoff Claims were first asserted in May 2010, the Debtors informed the Committee that they would not contest the Alter & Rosoff Claims because the Debtors lack independence. [redacted] The Committee has therefore commenced an investigation of the Alter & Rosoff Claims and potential Estate Claims.

19. [redacted]

[redacted]

10 [redacted]

11 [redacted]

[redacted]

A. The Alter & Rosoff Claims Are Based on a Change of Control

20. The Alter & Rosoff Claims are based, in part, upon the occurrence of a "change in control" or "change of control" under the terms of the SEIP and the SERP (collectively, a "Change of Control"). Under the SERP and the SEIP, a Change of Control may be triggered by events including "the date the stockholders of the Company (or the Board of Directors, if stockholder action is not required) approve [(a)] a plan or other arrangement pursuant to which the Company will be dissolved or liquidated" or (b) "a definitive agreement to sell or otherwise dispose of substantially all of the assets of the Company."[12] If a Change of Control has occurred or occurs, Alter and Rosoff may be entitled to full benefits under the SEIP and the SERP, which they allege to be approximately $51.8 million. In contrast, if no Change of Control occurs, or either Alter or Rosoff resigns or is terminated without cause prior to the occurrence of a Change of Control, potential benefits under the SEIP and the SERP would be substantially smaller, and if

[12] The definitions of "change of control" under the SEIP and "change in control" under the SERP are substantially similar.

either is terminated for cause prior to the occurrence of a Change of Control, he receives no benefits at all under the SEIP or the SERP. [redacted]

B. [redacted]

21. [redacted]

II. [redacted]

22. It is typical for debtors in possession to conduct an assessment of potential claims they may hold, particularly those arising prepetition, that may be prosecuted for the benefit of their estates. Moreover, where officers or directors of a corporation are faced with potential claims that could render their decisions on corporate acts not disinterested, it is common for the board to establish an independent or special committee to insulate corporate decision-making from improper influence. [redacted]

[redacted]

23. Based on the Committee's ongoing investigation of Estate Claims, the Committee believes that the estates may have colorable claims against Alter, Rosoff, the Debtors' current and former directors and officers and other parties, arising from pre- and post-petition conduct. The potential Estate Claims include, without limitation: (a) avoidance actions; (b) breaches of fiduciary duty, including in connection with (i) [redacted] potential post-petition conduct that may have enhanced the Alter & Rosoff Claims (which is subject to ongoing investigation), (ii) pre-petition management of the Debtors' businesses and (iii) potential misrepresentations to holders of Investment Notes and RediReserve Certificates (together, the "Retail Notes") encouraging holders to extend maturity of their Retail Notes in the weeks prior to the Petition Date; (c) wrongful distribution under Delaware law arising from repurchase of equity interests in Advanta; and (d) equitable subordination of the Alter & Rosoff Claims. The Committee believes that if the Estate Claims are further investigated and prosecuted, they could yield significant recoveries for the benefit of the estates and unsecured creditors.

III. THE DEBTORS HAVE USED EXCLUSIVITY TO PRESSURE THE COMMITTEE TO GRANT VALUE TO INSIDERS AT THE EXPENSE OF THE ESTATES

A. The Debtors Have Refused the Committee's Requests Regarding the Debtors' Plan Treatment of the Alter & Rosoff Claims and the Estate Claims

24. On August 31, 2010, the Debtors provided the Committee with drafts of the Debtors' Plan and Disclosure Statement. The Committee engaged in good faith negotiations

[13] [redacted]

with the Debtors concerning the terms of the Debtors' Plan, which ultimately resulted in three core issues of disagreement surrounding the Alter & Rosoff Claims and the Estate Claims: the scope of exculpation of post-petition actions and conduct ("Exculpation"), language to retain jurisdiction and the mitigation of a Change of Control. Moreover, the Debtors have triggered a fourth dispute by unilaterally withdrawing the Committee's agreed to consent rights with respect to fundamental aspects of the Debtors' Plan.

25. In letters dated October 25, 2010 (attached hereto as Exhibit E) and November 1, 2010 (attached hereto as Exhibit F), the Committee requested that the Debtors take certain precautions to avoid improperly and/or unnecessarily advancing and furthering the Alter & Rosoff Claims by triggering a Change of Control, in addition to addressing the other issues outlined above. The Committee also asked the Debtors to conduct an investigation into whether grounds exist to discharge Alter and Rosoff for cause, because such termination before a Change of Control occurred would eliminate any payments under the SEIP and the SERP.

26. On October 27, 2010, the Debtors responded to the Committee by letter (attached hereto as Exhibit G) refusing the Committee's proposals to undertake an investigation of Alter and Rosoff. Not only did the Debtors refuse to implement the Committee's proposals or even engage in a dialogue with the Committee on these important issues, but they informed the Committee that they intended to approve the Debtors' Plan on the basis of the proposed Alter/Rosoff Agreement which was attached to the October 27 letter as an exhibit. In the Alter/Rosoff Agreement, Alter and Rosoff, among other things, submit that "approval" of the Debtors' Plan and the Board's authorization of the filing of the Debtors' Plan shall, for the purposes of determining whether a Change of Control has occurred under the SEIP and the SERP, "have no different effect than if such chapter 11 plan . . . had been approved and filed by

the [Committee]." Alter and Rosoff further state that if, pursuant to a final non-appealable order, a court finds that either of them could have properly been terminated on October 31, 2010 for cause under the SERP or SEIP, then, for the purposes of any claims asserted under the SEIP or SERP, Alter or Rosoff, as the case may be, shall "be treated as if he had been terminated for 'Cause' on October 31, 2010."

27. On November 4, 2010, the Debtors delivered a second letter (attached hereto as Exhibit H) to the Committee asserting that the Alter/Rosoff Agreement "obviates any arguments that the Board should conduct an investigation of Messrs. Alter and Rosoff," and that "[a]ny investigation by the Board would be redundant . . ." and "would have no purpose other than to harass Messrs. Alter and Rosoff."

28. While the Debtors have pointed to the Alter/Rosoff Agreement as their sole answer to the Committee's concerns with the Debtors' Plan, the Alter/Rosoff Agreement does nothing (a) to ensure that post-petition acts and/or omissions by the Debtors' insiders—including Alter and Rosoff—have not already triggered a Change of Control and/or otherwise favored the Alter & Rosoff Claims, or (b) to preclude the Debtors' insiders—including Alter and Rosoff—from taking future actions to enhance the Alter & Rosoff Claims. Furthermore, under the Debtors' proposed Exculpation, Alter, Rosoff and the Debtors' other insiders arguably would be fully exonerated from almost all post-petition conduct related to the advancement of the Alter & Rosoff Claims and from taking such improper actions in the future. ***Fundamentally, Alter and Rosoff should not be permitted to rely on post-petition actions and omissions of the Debtors to advance and support the Alter & Rosoff Claims, while precluding the estates from relying on post-petition actions and omissions of the Debtors in defense of such claims***.

29. By approving the Debtors' Plan in reliance on the Alter/Rosoff Agreement, the Debtors and the Board abdicated their responsibilities to protect against unnecessary enhancement of the Alter & Rosoff Claims. [redacted] The absence of such commitments and representations and the failure of the Debtors' October 27, 2010 letter and the Alter/Rosoff Agreement to address such issues is particularly relevant given that the Debtors seek Exculpation for nearly all post-petition actions and conduct of their officers and directors, including Alter and Rosoff.

30. In addition, the Debtors and the Board abdicated their responsibilities to consider whether Alter and/or Rosoff should be terminated for "Cause"[14] and have placed the burden on the Committee and the Trusts to file a lawsuit seeking a final order that Alter and Rosoff could have been terminated for Cause on October 31, 2010. The burdens have thus been flipped to the

[14] "Cause" under the SEIP is defined as either (a) "willful and continued failure by the Participant to perform his or her duties which the Participant fails to cure . . ." or (b) "engaging by the Participant in conduct which is clearly and materially injurious to the Company" done "in bad faith and without reasonable belief that his or her action or omission was in or not opposed to the best interests of the Company." *See* SEIP, Exhibit C to Proof of Claim filed by Alter and attached hereto as Exhibit B, section 2.2.

"Cause" under the SERP is defined as any "act of dishonesty, fraud, theft, misappropriation, or embezzlement" done "in bad faith and without reasonable belief that his action or omission was in or not opposed to the best interests of the Company." *See* SERP, Exhibit B to Proof of Claim filed by Alter and attached hereto as Exhibit B, section 7.1(a).

detriment of the estates.[15] [redacted]

31. In sum, these are issues that the Debtors should have considered with the Committee *before* the Board took action, as requested in the Committee's October 25 letter. The Board's actions have therefore been anything but "neutral" and in fact may have waived valuable rights of the estates for the benefit of Alter and Rosoff.

1. Exculpation—Section 10.7 of the Debtors' Plan

32. The Debtors' Plan provides for Exculpation for the Debtors, their officers, directors, employees, managing directors, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys, and each of their respective agents and representatives, for acts and omissions in connection with, among other things, these chapter 11 cases, the Debtors' Plan and "property to be distributed under the [Debtors'] Plan"; provided that Exculpation does not apply to (i) any such act or omission to the extent such act or omission is determined by a final order to have constituted willful misconduct, gross negligence, intentional fraud, or criminal conduct of any such person or entity, or (ii) any actions of the Board on December 10, 2009 relating to the decision to liquidate Advanta.

33. The Debtors assert that it is "customary that a chapter 11 plan contain a provision exculpating officers and directors for postpetition conduct." *See Debtors' Objection to the Expedited Motion of the Official Committee of Unsecured Creditors to Conduct Examination of the Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* [D.I. 921] (the

[15] In other words, if the Board were to terminate Alter or Rosoff for Cause, to recover benefits forfeited under the SERP or SEIP, Alter and/or Rosoff would then bear the burden of bringing a lawsuit to challenge that decision. *See, e.g., Gary v. Beazer Homes USA, Inc.*, No. 3537, 2008 Del. Ch. LEXIS 72 (Del. Ch. June 11, 2008). In contrast, the Alter/Rosoff Agreement attempts to reverse the burden of proof, requiring the estates to achieve a final judgment—at the estates' cost—that there was Cause to terminate them.

"2004 Objection"). To the contrary, granting Exculpation in the circumstances of these cases would be neither reasonable nor customary, where:

- the Debtors' officers and directors—including Alter and Rosoff—may have engaged in post-petition conduct that improperly and unnecessarily advanced the Alter & Rosoff Claims, [redacted] and Exculpation would preclude potential Estate Claims and defenses to the Alter & Rosoff Claims arising out of such post-petition conduct;

- the post-petition conduct of the Debtors and their insiders has not yet been fully assessed by an independent fiduciary;

- the Debtors have refused to produce documents requested by the Committee after the Committee raised potential Estate Claims against Alter, Rosoff and other insiders, except as and when such production is intended to serve their litigation interests, such as following the deposition of Ms. Dunn; [16]

- the Board has refused to investigate [redacted] and

- the Debtors' officer and directors—including Alter and Rosoff—are not restrained or restricted from taking or making additional post-petition actions or omissions that may improperly and/or unnecessarily trigger a Change of Control and/or otherwise advance the Alter & Rosoff Claims and/or further impair the estates' defenses and ability to challenge the Alter & Rosoff Claims.

34. The Committee, which is the only independent fiduciary to have commenced analysis of the Estate Claims, believes it is inappropriate and unjust for the Debtors' Plan to foreclose Estate Claims based on post-petition conduct in these liquidation cases, before an independent investigation of such claims may be completed and before creditors and this Court are able to assess whether the Debtors' officers and directors have acted improperly to advance the Alter & Rosoff Claims. Exculpation is particularly troubling given that the Debtors have

[16] After the deposition of Ms. Dunn, the Debtors produced on their own initiative and without explanation various documents of their own selection, [redacted]

refused to provide information the Committee requested that would allow it to investigate, while at the same time refusing to investigate based on the Committee's (hampered) investigation.

35. In an attempt to break through an impasse in negotiations, the Committee proposed, as a compromise, that it could support a revised form of Exculpation that integrated the concept of a "challenge period" of 180 days after the plan effective date before Exculpation becomes binding on the estates, except that if the Trustees file claims against any otherwise-exculpated person within that time, Exculpation would not be effective as to that person only with respect to the subject matter of the claims filed. This proposal was designed to give the Liquidating Trusts sufficient time to investigate and prosecute any potential Estate Claims while also meeting the Debtors' requests to include exculpation in the Debtors' Plan.

36. The Debtors refused the Committee's proposed compromise on Exculpation and, instead, offered to include a reservation of the Committee's rights to object to confirmation of the Debtors' Plan with respect to Exculpation, provided that the Committee supported the Debtors' Plan. The Debtors also refused to take actions suggested by the Committee or to coordinate their potential actions with the Committee to avoid unnecessarily enhancing the Alter & Rosoff Claims. The Debtors thus proposed that the Committee support the Debtors' Plan and then object to confirmation with respect to Exculpation with no commitment from the Debtors that they (a) would not withdraw the Debtors' Plan if this Court ruled against them on Exculpation, and (b) would not take any further actions that could cause a Change of Control or otherwise further the Alter & Rosoff Claims. Rather than delegate authority to consider Exculpation to an admittedly independent fiduciary, [redacted] the Debtors propose that creditors should bear the burden of fighting out Exculpation before this

Court by funding litigation on both sides. The Debtors' proposal thus unjustifiably shifts the risks of increased cost and delay to creditors solely to benefit the Debtors' insiders.

2. Retention of Bankruptcy Court Jurisdiction over Estate Claims

37. The Committee views retention of this Court's post-confirmation jurisdiction as essential to minimizing the expense of prosecuting the Estate Claims. The Committee therefore requested that the Debtors include language in the Debtors' Plan and Disclosure Statement describing, in general terms, the Estate Claims and potential defendants, and disclosing that the Estate Claims are assets of the estates to be investigated and liquidated for the benefit of creditors.[17] The Debtors refused to include such language on the basis that it is "unnecessary and inflammatory." 2004 Objection, at ¶ 921. [redacted] it appears that management's refusal to work towards compromise language is intended to pressure the Committee to agree to the Debtors' approach on Exculpation.

3. Mitigating Change of Control

38. The Committee requested that the Debtors avoid actions that could trigger a Change of Control that would significantly increase (by some estimates, in excess of $20 million) the amount of the Alter & Rosoff Claims. The Committee suggested that the Debtors take precautions including either (i) conditioning Board approval of, or the filing of, the Debtors' Plan on a written agreement by Alter and Rosoff to waive any argument that the Board's approval of the Debtors' Plan, or its filing or confirmation, constitute a Change of Control, or (ii)

[17] The Third Circuit has held that the Bankruptcy Court's post-confirmation jurisdiction over non-core matters is limited to situations in which there is a "close nexus" between the terms of the confirmed chapter 11 plan and such non-core matters. *See, e.g., In re Resorts Int'l, Inc.*, 372 F.3d 154, 161, 168-69 (3d Cir. 2005). This Court has provided guidance that a close nexus can be preserved where the plan and disclosure statement identify the non-core claims as assets to be liquidated and distributed to creditors. *See, e.g., In re Insilco Tech., Inc.*, 330 B.R. 512, 524 (Bankr. D. Del. 2005) (Carey, C.J.).

waiving exclusivity with respect to the Committee to permit the Committee to propose a chapter 11 plan that would virtually mirror the Debtors' Plan. The Debtors rejected the Committee's requests, without taking up the Committee's offer to share the results of its investigation and work with the Debtors on other alternatives to prevent an unnecessary Change of Control.

39. [redacted]

B. As the Expiration of the Debtors' Exclusivity Approached, the Debtors Stripped Consent Rights to Pressure the Committee to Agree to the Debtors' Demands

40. After refusing the Committee's compromise proposal on Exculpation, the Debtors advised the Committee that unless it agreed to the Debtors' positions on the plan, the Debtors would ignore what was at the time an integrated agreement to plan terms developed over weeks of negotiations. The Debtors then followed through with this threat, stripping previously-agreed to "reasonable consent" rights of the Committee regarding certain of the most fundamental discretionary aspects of the Debtors' Plan including, without limitation:

- the selection of the Trustees, which have the discretion to, among other things, pursue, settle or abandon the Estate Claims and object or not object to the Alter & Rosoff Claims;

- the Trust Agreements;
- the Confirmation Order;
- the Plan Supplement;
- modification or amendment of the Debtors' Plan or any Plan Supplement;
- the Disclosure Statement and Disclosure Statement Order;
- the selection of the assets that will be left with Reorganized Advanta; and
- the selection of which of the Debtors' executory contracts and leases should be assumed, assigned or rejected, and the related selection as to which of the Debtors' compensation and benefits programs should be terminated.

The Debtors previously agreed that these consent rights were appropriate in these cases because the Debtors will liquidate for the primary benefit of their unsecured creditors. The Debtors' Plan strips the Committee of any role in implementation of the plan and thus provides for no oversight of the Debtors' implementation of the plan by a party representing the unsecured creditors. Such oversight is essential in these cases because the Debtors admittedly cannot act independently regarding the Estate Claims, the Alter & Rosoff Claims or future actions that could cause a Change of Control. Indeed, the Debtors' Plan leaves the insiders in control of selecting the Trustees who will decide whether to sue (or settle with) these same insiders. The Debtors' refusal to provide consent rights for the Committee or any other independent fiduciary is thus an independent basis for the Committee's opposition to the Debtors' Plan.

IV. TERMINATION OF EXCLUSIVITY WOULD MOVE THESE CHAPTER 11 CASES FORWARD

41. Continuation of the Debtors' current plan process without Committee support would be futile because the vast majority of creditors entitled to vote on the Debtors' Plan are not likely to support the Debtors' Plan if such plan is opposed by the Committee. If the Debtors'

Plan is rejected by creditors and/or is not confirmed, the estates will incur substantial administrative expenses and delay through a second solicitation process.

42. Instead, the Committee is prepared to propose its own chapter 11 plan (the "Committee's Plan") to be submitted simultaneously with the Debtors' Plan, on substantially similar terms to the Debtors' Plan except for those issues where the Committee believes that the Debtors have failed to maximize the value of the estates by favoring the interests of their insiders. Terminating exclusivity to permit the Committee to propose its plan on a simultaneous solicitation track would minimize administrative expenses and give creditors a choice on these key issues, thus allowing the beneficiaries of the plan to determine whether the Debtors' Plan or the Committee's Plan preserves the maximum value available, and avoiding the potentially enormous administrative expenses and delay that would be associated with a second solicitation process following rejection of the Debtors' Plan.

JURISDICTION AND VENUE

43. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for relief requested herein are 11 U.S.C. §§ 105(a) and 1121(d). Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

RELIEF REQUESTED

44. By this Objection and Motion, the Committee requests that the Court (i) deny the relief sought in the Debtors' Exclusivity Motion, (ii) enter an order terminating the Debtors' Exclusive Period, and (iii) authorize the Committee to file and solicit acceptances to the Committee's Plan.

BASIS FOR RELIEF

I. CAUSE EXISTS TO TERMINATE EXCLUSIVITY

45. Section 1121(d) of the Bankruptcy Code provides that the Court may terminate the Exclusive Periods "for cause":

> [O]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C § 1121(d).

46. While the Bankruptcy Code does not define what constitutes "cause," courts in this jurisdiction and elsewhere generally rely upon the same set of considerations to determine whether cause exists, including: (a) the size and complexity of the debtor's case; (b) the existence of good faith progress towards developing a plan of reorganization; (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors "to accede to [the debtors'] reorganization demands;" (d) the existence of an unresolved contingency; (e) the fact that the debtor is paying its bills as they come due; (f) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (g) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (h) whether the debtor has made progress in negotiations with its creditors; and (i) the amount of time which has elapsed in the case. *See, e.g., In re Central Jersey Airport Servs., LLC*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re Adelphia Commc'ns. Corp*., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006).

47. Section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause.'" *In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 132 (D.N.J. 1995) (citing *In re Kerns*, 111 B.R. 777, 781 (S.D. Ind. 1990)); *In re Sharon Steel Corp.*, 78 B.R. 762, 763-64 (Bankr. W.D. Pa.

1987)). *See also In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987) (en banc) (A court assessing "whether 'cause' exists should be mindful of the legislative goal behind § 1121 . . . [it] must avoid reinstituting the imbalance between the debtor and its creditors that characterized proceedings under the old Chapter XI," which gave the debtor "undue bargaining leverage, because by delay he c[ould] force a settlement out of otherwise unwilling creditors.") (internal citations and quotations omitted), *aff'd*, 484 U.S. 365 (1988).

48. Courts have noted that "the primary consideration in determining whether to terminate the debtors' exclusivity is whether its termination will move the case forward, and that this 'is a practical call that can override a mere toting up of the factors.'" *In re Adelphia Commc'ns. Corp.*, 352 B.R. at 590 (quoting *In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997)). The *Adelphia* court went on to note that the "test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case. Certainly practical considerations, or other considerations in the interests of justice, could override, in certain cases, the result after analysis of the nine factors." *Id.* at 590 (citing *In re Dow Corning*, 208 B.R. at 670).

A. The Committee Has Mastered the Issues Presented By These Chapter 11 Cases and Is Prepared to Propose and Solicit a Plan Simultaneously With the Debtors

49. Regardless of how large and complex the Debtors' businesses *were* in the past, the Debtors' Plan provides for a liquidation of the estates through trusts—a well-trod plan structure. The Debtors do not represent that they need yet more time to assess their assets and liabilities or to evaluate claims. The Debtors simply state that "having filed the Proposed Plan, the additional time requested in this Motion will allow the Proposed Plan to be prosecuted in a more cost effective manner." *See* Debtors' Exclusivity Motion, ¶ 14. [redacted]

[redacted]

50. The Committee will be prepared to propose a chapter 11 plan shortly following the hearing on this Objection. The Committee's Plan would mirror the Debtors' Plan except for those particular provisions that are intended to favor the Debtors' insiders. Moreover, solicitation of the Committee's Plan may proceed simultaneously with solicitation of the Debtors' Plan. The differences between the two plans would be few and straightforward and may be clearly explained to creditors, including through distribution of a redline reflecting the differences between the two plans. In fact, because the two plans would be identical in their core structures for formation of trusts to distribute the estates' assets, simultaneous solicitation of the Committee's Plan and the Debtors' Plan could be accomplished on the basis of one disclosure statement that explains the limited differences between the plans. The cost of such a process would be minimal, particularly when compared to the potential cost of the second solicitation, which is a likely outcome given creditors' likely reactions to the Debtors' Plan as currently proposed and the Committee's recommendation that unsecured creditors reject the Debtors' Plan.

B. The Debtors Actions Have Failed to Demonstrate Good Faith Progress Towards a Plan

51. The Debtors' proposal for Exculpation for insiders who have asserted substantial claims against the estates, and the Board's approval of the Debtors' Plan at the behest of these same insiders, [redacted] demonstrates the Debtors' inherent conflicts with respect to any plan in these cases. The Debtors' final offer to the Committee to support the Debtors' Plan, without language regarding retention of post-confirmation jurisdiction

and offering only a reservation of rights to object to Exculpation, amounted to what the Debtors knew would be an unacceptable, take-it-or-leave-it offer. *See In re Lake in the Woods*, 10 B.R. 338, 344 (E.D. Mich. 1981) (The "take-it-or-leave-it attitude on the part of debtors" as permitted under the Bankruptcy Act was "fraught with potential abuse" and permitting creditors to propose plans serves to eliminate the potential harm and disadvantages to creditors . . . .) (internal citations omitted). The Debtors have proposed a plan that seeks to deliver value to insiders at the expense of the estates and deprive the estates of defenses against insider claims. Based on the Debtors' Plan and Disclosure Statement, creditors (other than insiders) have no way of knowing that accepting the Debtors' Plan would (a) exculpate the Debtors' officers and directors from potentially improper and unnecessary post-petition actions and omissions that furthered the Alter & Rosoff Claims, (b) leave the Debtors' insiders free to take additional actions to advance the Alter & Rosoff Claims, (c) compromise the estates' defenses against the Alter & Rosoff Claims and (d) impair the Trustees' ability to realize value from the Estate Claims.

52. If the Alter and Rosoff Claims are treated fairly and neutrally and if a confirmed plan preserves the full ability of the Trusts to assert Estate Claims against the Debtors' insiders, all creditors will benefit. In light of the potential that even the Senior Note holders, whose recoveries are supplemented by recoveries that would otherwise go to the Subordinated Note holders, could receive only a 64 percent recovery, *see* Disclosure Statement, at p. DS-9, creditors should have the choice of a plan that ensures that the Alter & Rosoff Claims will be fairly handled and that the full opportunity to pursue Estate Claims is preserved so that *all* creditors may share in the prospect of improved recoveries.

53. Additionally, cause exists to terminate exclusivity in these cases because as set forth above, the Debtors have not taken measures to address the obvious conflicts of interest that

exist between the personal interests of the Debtors' insiders and the interests of the estates and all other creditors. In light of the foregoing, creditors have no assurance that the Debtors are capable of conducting a plan process that maximizes value for non-insider creditors. Instead, creditors in these cases are essentially asked to trust that the Debtors are looking out for their interests, notwithstanding the Debtors' actions that show the Debtors' assurances to be false and that have led the Committee to lose faith in the Debtors' ability and willingness to honor their fiduciary duties to creditors. Regardless of the disclosures that the Court may require on these issues, so long as exclusivity remains, creditors would have no choice but to accept the Debtors' Plan or bear the costs of the Debtors' tactics by funding a second solicitation process. Terminating exclusivity now will resolve this dilemma by allowing the Committee to propose a plan free of conflicts of interest.

C. The Debtors Are Using Exclusivity to Pressure the Committee to Accede to the Debtors' Demands

54. As evidenced by the Debtors' decision to file a plan that stripped away the Committee's previously bargained for consent, consultation and approval rights, the Debtors are using exclusivity to force the Committee into fundamental concessions with respect to the Alter & Rosoff Claims. Resorting to such tactics to pressure the Committee to yield to the Debtors' demands on plan terms is the hallmark of bad faith that constitutes cause to terminate exclusivity. *See In re The Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) (citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 406 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 118 (1978) ("An extension should not be employed as a tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory.")); *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1006 (Bankr. N.D. Ind. 1990) (same).

55. While consent rights might seem inappropriate for an objecting party in a reorganization case, "reasonable consent" rights of the Committee are necessary and appropriate in these liquidation cases to provide oversight of the Debtors and ensure that the best interests of the estates are represented in implementation of the Debtors' Plan. As a critical example, the Debtors' Plan now leaves the Debtors' insiders with the authority to select the Trustees, who would have the responsibility to litigate, not to litigate or settle the Alter & Rosoff Claims and the Estate Claims on behalf of the estates and who have the sole authority to compromise the Estate Claims and the Alter & Rosoff Claims. No party can fairly be granted authority to select their own adversary in litigation that would determine the rights of third parties. Allowing the Debtors' insiders to do so in these cases without Committee oversight would unjustly prejudice the rights of creditors and advance a manifest abuse of process. Likewise, oversight is needed to ensure that the Debtors and the Board take appropriate precautionary measures to avoid future actions and omissions that may trigger a Change of Control.

D. The Debtors Have Failed to Fulfill Their Duties with Respect to the Largest Remaining Unresolved Contingencies of these Cases—the Alter & Rosoff Claims and the Estate Claims

56. The Alter & Rosoff Claims of approximately $51.8 million and the Estate Claims represent the most significant unresolved contingencies remaining in these chapter 11 cases. [redacted] Instead, the Debtors' officers and directors have taken post-petition actions, [redacted]

[18] [redacted]

[redacted], that may have enhanced the Alter & Rosoff Claims and have filed a plan that incorporates exculpation provisions that will impair the estates' defenses against the Alter & Rosoff Claims. [redacted] The Debtors are evidently unable or unwilling to address the most significant unresolved contingencies facing the estates—which position does not make them "neutral" with respect to such contingencies. Termination of exclusivity would allow the Committee to resolve these contingencies—the Alter & Rosoff Claims and the Estate Claims—in the best interests of the estates.

II. THE DEBTORS HAVE FAILED TO SHOW CAUSE EXISTS TO EXTEND EXCLUSIVITY

A. The Debtors Have Not Met Their Burden to Show Cause Exists for a Fourth Extension of Exclusivity

57. A debtor seeking to extend the 120-day exclusivity period bears the burden of proof to show cause for an extension. *E.g., In re McLean Industries, Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). In determining whether the debtor has demonstrated cause, the court "needs to consider more than the articulated cause presented to it . . . [s]ection 1121 was designed, and should be faithfully interpreted, to limit delay that makes creditors hostages of Chapter 11 debtors." *In re All Seasons Industries, Inc.*, 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (*citing In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987) (en banc), *aff'd* 484 U.S. 365 (1988) (citations omitted)). S*ee also In re Burns & Roe Enters., Inc.*, No. 05-2529, 2005 WL 6289213, at *5 (D.N.J. Nov. 3, 2005) ("[T]he Code was intended to create a relative balance of negotiating strength among debtor and creditor.") (internal quotations omitted).

58. Extension of exclusivity should not be granted as a matter of course, particularly here where the Debtors have had three prior extensions. *See Official Committee of Unsecured Creditors of Mirant Americas Generation, L.L.C. v. Mirant Corp.*, Nos. 04-476, 04-530, 2004 U.S. Dist. LEXIS 19796, *8 (N.D. Tex. Sept. 30, 2004) ("The debtor's burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts."); *see also In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997).

59. The Debtors have been afforded well in excess of their statutory exclusive period in these cases and the Debtors have failed to establish cause exists for a *fourth extension.* The sole "cause" alleged is that (i) these cases are large and complex,[19] (ii) the Debtors are paying their bills as they become due, and (iii) although unsuccessful, they have worked to formulate a chapter 11 plan supported by the Committee. *See* Debtors' Exclusivity Motion, ¶ 10, 13, 15. These bare assertions do not demonstrate cause for a fourth extension of exclusivity,[20] particularly here, where the Committee has lost faith in the capability of the Debtors' management to manage the plan process in an impartial manner and plan negotiations have been terminated by the Debtors.

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[19] The Debtors cite *In re Texaco, Inc.*, 76 B.R. 322,326 (Bankr. S.D.N.Y. 1987) for the proposition that the "large size of the debtor and the consequent difficulty in formulating a plan" warrants an extension of exclusivity and then summarily concluded that the size and complexity of these cases warrant an extension without any further explanation. *See* Debtors' Exclusivity Motion, ¶ 10 (emphasis added). The size of these cases alone should not support a finding of "cause" and, here, with the Debtors' Plan on file, the argument that the size and complexity of these cases warrant an extension to formulate a plan is now moot.

[20] The Debtors are paying their administrative expenses as they become due. This fact alone, however, does not support maintaining exclusivity. The Debtors are liquidating and have limited ongoing expenses and receipts. Upon information and belief, monthly ongoing receipts average approximately $2 million per month (excluding forecasted income from one-off asset sales), and are driven primarily by third party servicing of credit card accounts receivables from Advanta Bank Corp. Thus, creditors would essentially be funding any extension of exclusivity in these cases. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 410 (Bankr. E.D.N.Y. 1989) ("If the debtor's assets are likely to be depleted during the requested extension, it is unlikely that an extension will be granted."); *In re Southwest Oil Co.*, 84 B.R. 448, 453 (Bankr. W.D. Tex. 1987) (noting that an extension of exclusivity could worsen debtors' deteriorating financial condition, potentially causing harm to creditors).

B. The Debtors Seek to Use Exclusivity as a Tactical Device to Pressure Creditors to Yield to a Plan That Jeopardizes Value for Creditors for the Benefit of Insiders

60. One of the most important reasons for extending exclusivity is to facilitate negotiation and compromise so that a consensual plan can be proposed and confirmed without opposition. *In re All Seasons Indus., Inc.*, 121 B.R. at 1005-06 (denying request to extend exclusivity where debtor and creditors were unable to agree on a plan and creditors lost confidence in debtor's management, and finding an extension would force creditors to accept a plan they found unacceptable). S*ee also In re R&G Properties, Inc.*, No. 08-10876, 2009 Bankr. LEXIS 221, *13 (Bankr. D. Vt. Jan. 28, 2009) (shortening debtor's requested extension on account of the "vehement opposition" of the sole significant creditor, whose opposition carried "substantial weight"); *In re Curry Corp.*, 148 B.R. at 756.

61. Extensions of exclusivity should be "paid for" by the Debtors by "hard bargaining" during exclusivity. *In re Pub. Serv. Co. of New Hampshire*, 99 B.R. 155, 173 (Bankr. D.N.H. 1989) (finding that debtor did not engage in "hard bargaining" and denying its request to extend exclusivity where it was unlikely that a consensual plan would be forthcoming due to stalemate between debtors and party in interest on fundamental plan issues). Here, the Debtors have elected not to bargain at all on the disputed elements of the Debtors' Plan. They would rather impose the costs of a contested plan process on the estates than compromise the value they seek to deliver to insiders—such conduct does not justify the price the estates must pay to keep the Debtors in exclusivity.

62. When push came to shove over the final disagreements of the Debtors' Plan, the Debtors made no effort to compromise regarding the issues raised in the Committee's October 25, 2010 and November 1, 2010 letters, and instead offered unsatisfactory and incomplete

patches to the clear holes in the Debtors' Plan. [redacted] By filing a plan the Debtors knew the Committee would not support, and reversing terms that had been previously agreed to as part of a comprehensive plan proposal, the Debtors made clear that they refused to negotiate any further and would instead move forward to seek confirmation of a plan that seeks to insulate the Debtors' insiders from liability arising from post-petition conduct, including post-petition conduct that may improperly advance the Alter & Rosoff Claims and that has not, and cannot be under the Debtors' Plan, investigated prior to the effectiveness of Exculpation. If exclusivity is extended, creditors will be forced either to accept the Debtors' Plan and potentially sacrifice their rights, or fund the Debtors' tactics and wait out exclusivity until the Committee can file a plan that maximizes the value of the estates. This result is simply unfair and wasteful.

C. Denying the Debtors' Request to Extend Exclusivity Will Not Prejudice the Debtors

63. The termination or denial of the Debtors' request to extend their Exclusive Periods will not prejudice the Debtors because the Debtors have filed their own plan and will retain the right to attempt to confirm their plan. *In re Mother Hubbard*, 152 B.R. 189, 195 (Bankr. W.D. Mich. 1993). Courts have consistently recognized in cases where the debtor's motion to extend exclusivity was denied that a debtor is not harmed when a creditor is allowed to file a competing plan. *See, e.g., In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) ("The fact that the debtor no longer has the *exclusive* right to file a plan does not affect its concurrent right to file a plan. Denying the motion only affords creditors their right to file a plan; there is no negative affect [sic] upon the debtor's coexisting right to file its plan.") (citations omitted) (emphasis in original) (citing *In re Parker St. Florist & Garden Ctr., Inc.*, 31

B.R. 206, 207 (Bankr. D. Mass. 1983)). The risk that another party may file a plan while the debtors are developing their plan is a risk that Congress intended. *See In re All Seasons Indus.*, 121 B.R. at 1005.

64. Allowing the Committee to file its plan will not deprive the Debtors of their right to propose and solicit acceptances of their plan; instead it would provide the unsecured creditors—who should be the primary beneficiaries—with a choice between a liquidating plan that immediately exculpates insiders upon plan effectiveness and fails to provide creditors with a voice as to approval of the most fundamental aspects of such a plan or a liquidating plan that seeks to preserve, protect and maximize value for all creditors and that enjoys the support of the Committee. Denial of the Debtors' Exclusivity Motion is in the best interests of the Debtors' estates as it will promote a competitive plan process that will enable creditors to vote for the plan that maximizes their recoveries.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny the relief sought in the Debtors' Exclusivity Motion, (ii) enter an order terminating the Debtors' Exclusive Periods, (iii) authorize the Committee to file and solicit acceptances to the Committee's Plan, and (iv) grant such other and further relief it deems just and proper.

Dated: December 7, 2010
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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EXHIBIT A

FILED UNDER SEAL

EXHIBIT B

FILED UNDER SEAL

EXHIBIT C

FILED UNDER SEAL

EXHIBIT D

FILED UNDER SEAL

EXHIBIT E

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October 25, 2010

Robert J. Lemons, Esq.
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Re: *In re Advanta Corp., et al.* (Bankr. D. Del. No. 09-13931 (KJC))

Dear Rob:

As you know, the Official Committee of Unsecured Creditors (the "Committee") has been investigating the bases for the Proofs of Claim of Dennis Alter and William Rosoff (claim numbers 2341 and 2342, respectively and as amended) and the facts and circumstances giving rise to potential claims of the estates against Alter, Rosoff and other parties. The Committee has also engaged in discussion and negotiations with the Debtors pertaining to the Debtors' draft Chapter 11 Plan (as amended, modified or supplemented, the "Plan") and Disclosure Statement. Alter's and Rosoff's Proofs of Claims allege claims for benefits under the Supplemental Executive Retirement Plan (the "SERP") and the Supplemental Executive Insurance Program (the "SEIP", together with the SERP, the "Supplemental Plans"). The alleged claims for benefits are predicated, in part, on the assertion by Messrs. Alter and Rosoff that a "Change in Control" or "Change of Control" (collectively, a "COC") has occurred or will occur. Alter and Rosoff may argue that the Supplemental Plans provide for substantially enhanced benefits if a COC occurs while Mr. Alter or Mr. Rosoff is employed by Advanta Corp. The terms of the Supplemental Plans however provide that each will forfeit all his benefits if discharged for "Cause", but only if the discharge occurs prior to a COC. As you also know from our discussions, the Committee believes that Alter and Rosoff may argue, among other things, that the approval by Advanta Corp.'s Board of Directors (the "Board") of the Plan or its filing, or confirmation of the Plan, constitutes a COC under the Supplemental Plans.[1]

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[1] The Committee disagrees with any such arguments and reserves all of its rights and the rights of the estates with respect to any such arguments. The Committee specifically reserves any and all rights, claims, arguments, and causes of action with respect to Alter, Rosoff, other parties, the Supplemental Plans, and the approval to file, the filing, the contents and the solicitation and Bankrutpcy Court approval of the Plan and/or Disclosure Statement. Nothing in this letter shall affect or have any bearing on any of the rights of the Debtors' estates, the Committee or any prospective Trusts or Trustees appointed pursuant to the Plan or otherwise to assert that a COC

The Committee understands that the Board intends to meet on Tuesday, October 26, 2010, to consider approval of the filing of the Plan. The Board's approval to file the Plan under these circumstances could give rise to potential arguments that a COC has occurred and triggered substantial claims to the benefit of Alter and Rosoff, which may subject the estates and creditors to substantial but unnecessary harm. The Committee believes it is incumbent upon the Debtors and the Board, in the exercise of their respective fiduciary duties, to mitigate Alter's and Rosoff's substantial COC-based contingent claims.

Furthermore, the Committee understands that you have expressed a desire to remain "neutral" with respect to Alter's and Rosoff's claims against the estates. Contrary to this desire, however, the Committee believes that a decision by the Board to approve the filing of the Plan without taking action to mitigate against Alter's and Rosoff's COC-based contingent claims would not be neutral. Rather, such a decision potentially would benefit only Alter and Rosoff, while improperly harming the Debtors' estates and creditors. Such a decision would therefore run counter to the Debtors' fiduciary duties to maximize the value of their estates for the benefit of all creditors.

As we have discussed, there are alternatives to Board approval of the filing of the Plan that would mitigate against Alter's and Rosoff's COC-based contingent claims against the estates. These include, but are not limited to:

1. Waiving the Debtors' exclusivity to propose a chapter 11 plan with respect to the Committee and refraining from approving or filing the Plan, so that the Committee could propose its own chapter 11 plan.

2. Conditioning Board approval of the Plan or of the filing of the Plan on a written agreement by Alter and Rosoff to waive the portion of their claims that they may argue arise upon a COC or to waive any claim or argument that Board approval of the Plan or its filing, or confirmation of the Plan, constitute a COC under the Supplemental Plans. In any resolution ultimately approving the filing of the Plan under this scenario, the Board should include express statements that (a) such resolution is conditioned on a written agreement by Alter and Rosoff to waive the portion of their claims that they would argue arise upon a COC or to waive any claim or argument that Board approval of the Plan or its filing, or confirmation of the Plan, constitutes a COC under the Supplemental Plans and (b) the Board's approval of the filing of the Plan is not intended to and shall not constitute a COC under the Supplemental Plans.

In addition to the above, the Committee believes that the Debtors should not take any action with respect to the approval or filing of any plan until after the Board can conduct an investigation into whether sufficient grounds exist to discharge Alter and Rosoff for "Cause" (as such term is used in the Supplemental Plans). The Committee continues to pursue its investigation of facts supporting potential claims against, and discharge for Cause by the

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has not occurred, and is not occurring, including, without limitation, by reason of the approval, formulation, filing, prosecution or confirmation of the Plan. Moreover, nothing in this letter shall be deemed to be an admission by the Committee that Board approval of the Plan or of the filing of the Plan constitutes a COC under the Supplemental Plans.

Board of, Alter and Rosoff as well as other parties and based on its investigation, the Committee believes it is appropriate for the Board to conduct its own investigation with respect to such issues. The Committee is available to discuss its investigation confidentially with the independent members of the Board.

The Committee respectfully urges the Board and the Debtors to consider these and other mitigating actions before any Board action is taken with respect to approval or filing of the Plan. We encourage you to share this letter and its contents with the Board in advance of its planned October 26th meeting, and we request the opportunity to work with the Debtors with respect to Alter's and Rosoff's claims asserted against the estates. We believe the Committee should be consulted before any mitigating action is selected or put into effect. To be clear, the Committee believes that Board approval of the filing of the Plan in the absence of affirmative and effective steps (including those outlined in this letter) to mitigate against Alter and Rosoff's COC-based contingent claims against the estates would be contrary to the best interests of the Debtors' estates and their creditors and would not be consistent with the exercise of the Board's and the Debtors' respective fiduciary duties.

The Committee appreciates your time and consideration. As always, the Committee and its professionals are available to discuss all matters pertinent to these cases.

Respectfully yours,

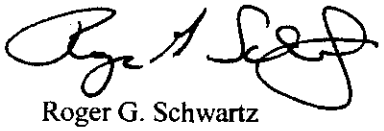

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EXHIBIT F

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November 1, 2010

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Re: *In re Advanta Corp., et al.* (Bankr. D. Del. No. 09-13931 (KJC))

Dear Rob:

As you are aware, from the outset of Plan[1] discussions, the Committee has expressed serious concerns with respect to a discrete number of issues concerning the Debtors' proposed Plan. In particular, and as we have discussed, the Committee believes that the Debtors' draft Plan puts at risk both (1) potentially valuable claims of the Debtors' estates by providing immediate exculpation to the Debtors' current and former directors and officers upon Plan effectiveness, while a short delay in exculpation – as the Committee has proposed – will enable the Committee and Liquidating Trusts time to investigate further and conduct further negotiations to determine whether they should initiate proceedings to bring any such claims; and (2) post-confirmation Bankruptcy Court jurisdiction to adjudicate such, by failing to include the Committee's straightforward language in the Plan and Disclosure Statement preserving such jurisdiction.

In light of your October 27 Letter and our subsequent discussions, however, we understand that the Debtors currently intend to move forward with the approval and filing of the Plan without addressing the Committee's concerns.[2] The Debtors have ignored the

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in my letter to you dated October 25, 2010 (my "October 25 Letter") or your response to me dated October 27, 2010 (your "October 27 Letter"), as applicable.

[2] The Committee disagrees with several of the characterizations and representations made in the October 27 Letter and the agreement submitted by Alter and Rosoff attached to that Letter (the "Alter/Rosoff Agreement"), though we do not intend to respond in detail here to every assertion made in your October 27 Letter and the Alter/Rosoff Agreement. The Committee appreciates that the Board considered my October 25 Letter, and understands that, for the benefit of, among others, the Committee and the Liquidation Trusts and Trustees, the Alter/Rosoff Agreement represents their agreement that they (1) will treat the Board's action with respect to authorization and filing of a chapter 11 plan, amendments, and substitutions thereto as if they had been approved and filed by the Committee without the Board's

Committee's requests, as expressed in the October 25, 2010 Letter and in discussions, including that any action by the Board with respect to authorization or filing of a plan be conditioned upon a written agreement by Alter and Rosoff either to waive the portion of their claims that they would argue arises upon a COC under the Supplemental Plans; or to waive any claim or argument that such Board action, or the filing or confirmation of the Plan, constitutes a COC. It now appears that the Debtors are inclined to continue to take actions that favor the Debtors' current and former directors and officers by refusing to adopt the Committee's proposed Plan language pertaining to exculpation and retention of Bankruptcy Court jurisdiction. We urge the Debtors to modify their actions and approach in order to avoid the substantial and unnecessay delay and expense their decisions will create for the Debtors, their estates and their creditors.

If the Debtors continue to ignore the Committee's concerns, the Debtors and the Board should understand that the Committee cannot support the proposed Plan as currently drafted, and in order to protect and preserve potentially valuable assets of the Debtors' estates will advocate against permitting solicitation of the Plan, will contest confirmation of the Plan and will move expeditiously for relief from the Bankruptcy Court for permission to file its own chapter 11 plan. Moreover, if the Debtors insist upon moving forward with the Plan in a form that appears to favor the interests of the Debtors' directors and officers at the expense of the estates, this may well force the Committee to accelerate its investigation and pursuit of the potential claims and causes of action on behalf of the estates against the Debtors' directors, officers and others.

Rather than undertake a course of action that invites unnecessary litigation, cost and delay, the Committee continues to believe that the Debtors can avoid precipitating such an outcome by agreeing to adopt the Committee's reasonable proposals with respect to exculpation and retention of jurisdiction as noted above and previously discussed in detail with the Debtors. The Debtors' refusal to agree to the Committee's requests on these points stands in direct conflict with the articulated goal set forth in your October 27 Letter of "promot[ing] expeditious distributions to the creditors at the minimum cost to the Debtors' estates." Instead, it will have exactly the opposite effect – namely, it will lead to needless but significant expense and delay related to exclusivity and plan litigation solely for purposes of conferring a benefit on the Debtors' officers and directors. Moreover, the Debtors' intransigence on these points lends further support to the conclusion that the Debtors are improperly using the chapter 11 plan process as leverage to attempt to pressure concessions from the Committee that would have the effect of diminishing the potential value of assets of

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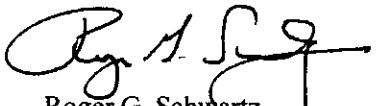
approval for purposes of any of their claims under the Supplemental Plans and (2) will be deemed to be treated as if terminated "For Cause", as defined under the relevant Supplemental Plans, on or before October 31, 2010 prior to the Board's anticipated action with respect to authorization and filing of the chapter 11 plan, if a court enters a final order including a finding that Alter or Rosoff could have been properly terminated "For Cause" on or before October 31, 2010. Nonetheless, neither your October 27 Letter nor the Alter/Rosoff Agreement fully and satisfactorily alleviates the concerns expressed in my October 25 Letter and the Committee expressly reserves all of its claims, rights and remedies with respect to the matters raised in my October 25 Letter.

the estates before such assets can be fully assessed and, if appropriate, pursued.[3] As such, we urge the Debtors to reconsider their decision, and thus avoid the substantial time and expense that moving forward with the Plan on a nonconsensual basis will entail.

The Committee remains ready to work with the Debtors and their professionals in order to ensure that the Plan addresses these issues in a manner that is in the best interests of the Debtors' creditors and their estates. If the Debtors are unwilling to do the same, the Committee requests that the Debtors stipulate to termination of the Debtors' exclusivity as to the Committee, and thereby avoid the extensive litigation costs that will be incurred in connection with the Committee's motion to terminate exclusivity. At a minimum, creditors of the Debtors' estates should be given the opportunity to vote on a chapter 11 plan that is supported by the Committee and that does not release or impair potentially valuable assets of the estates prematurely and unnecessarily.

Respectfully yours,



Roger G. Schwartz
of LATHAM & WATKINS LLP

[3] The Debtors' positions on these Plan issues are even more troubling given their admission that they have not, and have no intention to, conduct any independent investigation of the potential claims and causes of action from which they are seeking to exculpate their officers and directors and to deprive the Bankruptcy Court of its ability to adjudicate any claims against them.

EXHIBIT G

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BY E-MAIL

October 27, 2010

Roger G. Schwartz, Esq.
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885 Third Avenue
New York, NY 10022

Re: *In re Advanta Corp. et al.* (Bankr. D. Del. No. 09-13931 (KJC))

Dear Roger:

I have shared the letter that you sent me on October 25, 2010 (the "Letter") with the Board[1] and senior management of Advanta Corp. ("Advanta"). The Board has considered the Letter in the context of the current state of the Debtors' chapter 11 cases.

The Debtors do not agree with the Committee's assertion that approval of a chapter 11 plan for Advanta and the other Debtors at this time "would benefit only Alter and Rosoff." To the contrary, approval of a chapter 11 plan now is in the best interests of *all* of the Debtors' creditors. As you know, the Debtors have accomplished their goals in these cases by, among other things, mitigating claims of the FDIC against Advanta, securing the servicing and collection of credit card receivables owned by the Debtors, liquidating many of the Debtors' assets, and taking the steps necessary to liquidate and/or preserve the remaining assets while minimizing the chances of creating additional liabilities. Having accomplished these goals, it is incumbent on the Debtors to propose and implement a chapter 11 plan in order to begin distributions to their creditors, who have already been waiting for nearly a year. Additionally, implementation of a plan will increase distributions to creditors by conserving the Debtors' resources through reducing professional fees and further streamlining the Debtors' staffs.

The Board has carefully considered the Letter's request that the Board take action to mitigate claims asserted by Messrs. Alter and Rosoff. The Letter has requested that rather than approve a chapter 11 plan, the Board should consider, among other things, (i) waiving the Debtors' exclusive right to file a chapter 11 plan to allow the Committee to propose its own chapter 11 plan and (ii) investigating terminating Alter and Rosoff "for cause" prior to approving a chapter 11 plan. The Debtors do not believe that they should forego their statutory right to propose a chapter 11 plan or that there is any basis

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Letter.

for the Board to conclude that cause exists to terminate the employment of Messrs. Alter or Rosoff. Nonetheless, the Debtors have obtained delivery from Messrs. Alter and Rosoff of the letter attached as Exhibit A to this letter (the "Alter/Rosoff Letter"), which achieves the effect of the Committee's suggestions. The Alter/Rosoff Letter has the effect, for purposes of claims Messrs. Alter and Rosoff assert under the Supplemental Plans, of (i) treating the Board's anticipated approval of the chapter 11 plan and authorization of the filing of such plan and any subsequent amendments or substitutions as having no different effect than if such chapter 11 plan, amendments, and substitutions thereto had been approved and filed by the Committee without the Board's approval of such chapter 11 plan or authorization of the filing of such chapter 11 plan and any subsequent amendments or substitutions thereto, and (ii) deeming Messrs. Alter and/or Rosoff to be treated as if terminated "For Cause" on October 31, 2010, prior to the Board's anticipated approval of the chapter 11 plan, if a court of competent jurisdiction enters a final, nonappealable order including a finding that Messrs. Alter and/or Rosoff, as applicable, could have been properly terminated on October 31, 2010 "For Cause," as such term is used in the SERP or the SEIP, as applicable. While the Debtors are not aware of any basis for the Board to discharge Messrs. Alter and/or Rosoff "For Cause" or to conduct an investigation as to whether such grounds exist, given the terms of the Alter/Rosoff Letter such investigation is further unwarranted and would only be a distraction resulting in unnecessary cost and delay, which would only be detrimental to creditors.

Implementation of the chapter 11 plan should proceed independently of resolution of any claims of Messrs. Alter or Rosoff. As with all unresolved claims against the Debtors, the chapter 11 plan will preserve the ability of the liquidating trustees appointed pursuant to its terms to object to any claims of Messrs. Alter or Rosoff. Additionally, the Alter/Rosoff Letter preserves the ability of the liquidating trustees to investigate and pursue any claims that Messrs. Alter and/or Rosoff should have been terminated for cause prior to the chapter 11 plan's approval. There is no legitimate reason to delay proposing a chapter 11 plan. Any delay at this point would just be an inappropriate tactic against Messrs. Alter and Rosoff to the detriment of all of the Debtors' creditors.

In light of the foregoing and the impending expiration on November 5, 2010 of the Debtors' exclusive period to file a chapter 11 plan, the Board has scheduled a meeting to consider approval of Advanta's chapter 11 plan on November 1, 2010. The Debtors' preference, of course, is to file a chapter 11 plan that is supported by the Committee. The Debtors have agreed to nearly all of the Committee's comments to the plan to date and we believe that the draft of the plan most recently shared with the Committee accommodates all of its concerns that can legitimately be accommodated in the plan. To the extent that the Debtors and the Committee are unable to reach agreement on a consensual plan prior to the Board's upcoming meeting, the Board must nevertheless consider approval of a chapter 11 plan at the meeting to fulfill its fiduciary duties. The Debtors urge the Committee (and we invite you, of course to share this letter and its exhibit with the Committee) to work cooperatively with the Debtors towards this goal consistent with the Committee's fiduciary duty to all of its constituents to promote expeditious distributions to the creditors at the minimum cost to the Debtors' estates.

Consistent with its actions to date, the Board has and will continue to address all matters appropriately and to meet its fiduciary duties.

Yours truly,

Robert J. Lemons (vv)

Robert J. Lemons

Exhibit A

Dennis Alter
William Rosoff

November 1, 2010

To: Max Botel
Thomas Costello
Dana Becker Dunn
Ronald Lubner
Michael A. Stolper

Dear fellow Board members:

By this letter, each of us hereby confirms that (x) the approval by the Board of Directors (the "Board") of Advanta Corporation ("Advanta") of the chapter 11 plan for Advanta on November 1, 2010 and (y) the authorization by the Board on November 1, 2010 of the filing of a chapter 11 plan by Advanta and any subsequent amendments or substitutions thereto shall, for purposes of any claims that either of us has asserted or may assert as a result of the occurrence of a "Change of Control," including, without limitation, claims under the Advanta Corp. Supplemental Executive Retirement Plan for the Benefit of Dennis Alter (the "SERP") and the Advanta Corp. Supplemental Executive Insurance Program (the "SEIP") as a result of a "Change of Control" (as such term is used in each of the SERP and SEIP, respectively), have no different effect than if such chapter 11 plan, amendments, and substitutions thereto had been approved and filed by the official committee of unsecured creditors appointed in Advanta's chapter 11 case (the "Creditors' Committee") without the Board's approval of such chapter 11 plan or authorization of the filing of such chapter 11 plan and any subsequent amendments or substitutions thereto.

Additionally, although any possible assertion that cause exists for the termination by Advanta of either of our employments would be completely spurious:

(1) Dennis Alter hereby confirms that if a court of competent jurisdiction enters a final, nonappealable order including a finding that he could have been properly terminated on October 31, 2010 "For Cause" as such term is used in the SERP, Dennis Alter shall for purposes of any claims he has asserted or may assert in respect of the SERP be treated as if he had been terminated "For Cause" on October 31, 20~~01~~10; and

(2) each of us hereby confirms that if a court of competent jurisdiction enters a final, nonappealable order including a finding that either of us could have been properly terminated on October 31, 2010 for "Cause," as such term is used in the SEIP, whichever of us such finding is applicable to shall for purposes of any claims he has asserted or may assert in respect of the SEIP be treated as if he had been terminated for "Cause" on October 31, 2010. The appropriate courts will act in lieu of the "Committee," as defined in the SEIP, for this purpose.

Finally, each of us confirms that (i) this letter may be enforced by Advanta, its chapter 11 estate, the Creditors' Committee, or any liquidating trustee appointed under the terms of the chapter 11 plan and (ii) the order confirming the chapter 11 plan may incorporate the terms of this letter.

Sincerely,

Dennis Alter

William Rosoff

cc: Jay Dubow, Esq.
Marcia Goldstein, Esq.
Robert Lemons, Esq.
Roger Schwartz, Esq.

EXHIBIT H

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November 4, 2010

BY E-MAIL

Roger G. Schwartz, Esq.
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4834

Re: *In re Advanta Corp., et al.* (Bankr. D. Del. No. 09-13931 (KJC)

Dear Roger:

As you know, after consideration of the current state of the Debtors' chapter 11 cases, and taking into account the letter that you sent me on November 1, 2010 (the "November 1, 2010 Letter"),[1] Advanta's Board approved a chapter 11 plan for Advanta on November 1, 2010, and the Debtors filed a proposed chapter 11 plan (the "Plan") and disclosure statement (the "Disclosure Statement") with the Court on November 2, 2010. Regardless, the Debtors are compelled to respond to points raised in the November 1, 2010 Letter and I invite you to share this letter with the Committee.[2]

Contrary to the assertions in the November Letter, the Debtors have not ignored the Committee's requests as expressed in discussions and in the October 25, 2010 Letter. The primary request in the October 25, 2010 Letter was that the Board delay approval of a chapter 11 plan to provide time to consider factors to potentially mitigate COC claims of Messrs. Alter and Rosoff. The October 25, 2010 Letter proposed a number of alternative options, including that the Committee be permitted to file a chapter 11 plan and that the Board conduct an investigation of whether cause exists to terminate the employment of Messrs. Alter and Rosoff. As I detailed in the October 27, 2010 Letter, the Board has addressed those concerns by procuring from Messrs. Alter and Rosoff the letter attached as an exhibit to the October 27, 2010 Letter. As discussed in more detail in the October 27, 2010 Letter, the letter from Messrs. Alter and Rosoff gives the Committee the equivalent of what it sought and obviates any

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in your letter to me dated October 25, 2010 (the "October 25, 2010 Letter"), my letter in response dated October 27, 2010 (the "October 27, 2010 Letter"), or the November 1, 2010 Letter, as applicable.

[2] Of course, the failure of the Debtors to respond in this letter to any specific point in the November 1, 2010 Letter should not be construed as the Debtors' agreement to any aspects of the November 1, 2010 Letter.

arguments that the Board should conduct an investigation of Messrs. Alter and Rosoff.[3] The approval of the Plan did nothing to prejudice any ability of the Committee or, after the effectiveness of the Plan, the liquidating trustees to investigate and pursue any claims that cause existed to terminate the employment of Messrs. Alter and Rosoff prior to the Board's approval of the Plan. Any investigation by the Board would be redundant and would create wasteful costs and distractions at a time when the Debtors are trying to emerge for the benefit of their creditors. Accordingly, such an investigation by the Board would have no purpose other than to harass Messrs. Alter and Rosoff as an inappropriate tactic to gain leverage over them in discussions over the claims they have filed against Advanta.

Based on the foregoing and discussions with you, the Debtors are aware of only two points of disagreement between the Debtors and the Committee with respect to the Plan and Disclosure Statement. The first point is the Committee's insistence that the Debtors' directors' and officers' customary plan exculpation effectively be eliminated by being subject to claims asserted by the Committee or liquidating trustees for a period after the Plan's effective date. The Debtors do not believe that there is any legitimate basis to deny their directors and officers the exculpation protection provided to virtually every director and officer under a chapter 11 plan. In this case, the Debtors' directors and officers have earned exculpation by successfully guiding the Debtors through their chapter 11 cases. Creditor recoveries have been maximized by the Debtors' careful stewardship of their assets and successful and aggressive handling of critical issues with the FDIC. The Debtors have voluntarily excepted from the exculpation the Board's approval of Advanta's liquidation in December 2009, and the Committee has not identified any other postpetition action of any of the Debtors' directors or officers with which it takes issue. Regardless, the entitlement of the directors and officers to exculpation is purely a legal issue that should not create a disagreement between the Debtors and the Committee. The Debtors offered the Creditors Committee the opportunity to support the Plan with the Disclosure Statement indicating that the Committee reserved the right to ask the court for a substitute exculpation provision. The Committee will still have the right to object to the Plan's exculpation provisions and the Court will decide the extent to which the directors and officers are entitled to exculpation.

The second material point of disagreement is over what language in the Plan and Disclosure Statement is necessary to retain jurisdiction by the Court over any claims that the Debtors' estates may have against directors and officers. The Debtors believe that the Plan and Disclosure Statement contain sufficient language to preserve jurisdiction and that adding additional language would be unnecessarily inflammatory. Additionally, as I mentioned to you, Messrs. Alter and Rosoff have agreed that they would deliver a letter to the Debtors waiving arguments that the Court does not have jurisdiction over

[3] Contrary to the assertion in the November 1, 2010 Letter, the Board cannot delay approval of a chapter 11 plan until Messrs. Alter and Rosoff waive COC claims. As you know, neither the Board nor the Debtors can force such a waiver, and continued delays in the plan process only hurt the creditors. It would not be appropriate for the Debtors to insist on *any* creditor waiving its rights as a condition to going forward with a chapter 11 plan for the benefit of all creditors. Messrs. Alter and Rosoff have whatever rights to which their agreements and any applicable facts entitle them, the liquidating trustees will have the ability to challenge those rights, and, absent a settlement, the Court will ultimately decide whether to allow or disallow their claims.

any claims of the Debtors' estates against them. But, like the exculpation issue, this is purely a legal issue that can be resolved by the Court. The Debtors will, of course, include any additional language on this issue if required by the Court.

The Debtors' chapter 11 cases are more than a year old and the Debtors have successfully accomplished all of their goals in chapter 11. All that remains is the claims resolution process, the stewardship and liquidation of remaining assets, and distributions, all of which will be most effectively done (as in most liquidating chapter 11 cases) by a liquidating trustee after the Plan's effectiveness. By any measure, it is time for the Debtors to pursue their exit from chapter 11. Delaying the Debtors' emergence will only increase costs to the detriment of the vast majority of the Debtors' creditors, and in particular the retail note holders who stand to get most of their money back and who are most damaged by delay and incremental losses. Only the trust preferred note holders, who have contractually agreed to subordinate their claims to claims of the retail note holders, potentially materially benefit.

Accordingly, while the Debtors of course would prefer that the Committee support the Plan, the Debtors believe it is incumbent on them to pursue the Plan's confirmation with or without the Committee's support. Additionally, the Debtors cannot agree to the Committee's request that the Debtors agree to terminate exclusivity to allow the Committee to file a competing chapter 11 plan. The Debtors believe that the Plan provides the best mechanism for the maximum and earliest distributions to creditors and that competing plans will create additional costs and delays that will not benefit the creditors. The Debtors and the Committee do not even appear to have any disputes over the Plan's economics. If the Committee continues to take issue with aspects of the Plan or Disclosure Statement, the Debtors believe that the creditors would be better served by the Committee pursuing any objections through the normal Court processes.

Yours truly,

Robert Lemons