IN THE 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. 981**
	:	**Hearing Date: December 16, 2010 at 3:30 p.m.** **Response Deadline: December 13, 2010 at 4:00 p.m.**

JOINDER OF LAPIS ADVISERS, LP TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EXPEDITED MOTION TO TERMINATE THE DEBTORS' EXCLUSIVITY PERIODS

Having reviewed the Motion to Terminate[2] and various related pleadings filed by the Official Committee of Unsecured Creditors (the "Committee"), Lapis Advisers, LP, on behalf of itself and its managed funds ("Lapis"), respectfully submits the following joinder to the Motion to Terminate.

[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.

[2] The "Motion to Terminate" is that certain *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* [Docket No. 981].

JOINDER

1. Lapis is a significant holder of Investment Notes issued by Advanta Corp. and likely among the Debtors' largest individual stakeholders. Like all creditors, Lapis desires to see an appropriate plan get confirmed and go effective in a timely fashion so Lapis can receive distributions on its unpaid claims.[3] Unfortunately, Lapis has lost faith in the ability of the Debtors' officers, board, and counsel to move these cases toward confirmation.

2. Chapter 11 cases should be run for the benefit of the estate stakeholders to whom a debtor, its managers, and its counsel owe fiduciary duties.[4] Chapter 11 cases should ***not*** be run for the benefit of the officers and directors who are estate fiduciaries. Moreover, when an ostensible estate fiduciary is unwilling or unable to act in the best interests of the estate due to a conflict of interest, that fiduciary should be replaced by a truly independent estate fiduciary, such as a creditors committee. *See, e.g., Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 572-74 (3d Cir. 2003).

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[3] This is particularly so in light of the fact that the Debtors' current plan fails to pay or turnover postpetition interest on the Investment Notes. As The Bank of New York Mellon, indenture trustee for the Investment Notes, has already explained, the plan's failure to provide for Lapis to receive "payment in full" probably renders the plan unconfirmable under Bankruptcy Code sections 510(a) and 1129(a)(1). *See (A) Joinder of The Bank of New York Mellon, as Trustee, in the Objection of the Official Committee of Unsecured Creditors [Etc.]* [Docket No. 987] at pp. 3-6.

[4] *See, e.g., In re Intermagnetics Am., Inc.*, 926 F.2d 912, 917 (9th Cir. 1991) ("Officers of a debtor-in-possession are officers of the court because of their responsibility to act in the best interests of the estate as a whole and the accompanying fiduciary duties."); *In re Hampton Hotel Investors, L.P.*, 270 B.R. 346, 361 (Bankr. S.D.N.Y. 2001) ("The United States Supreme Court has made clear that a debtor in possession, like a chapter 11 trustee, owes the estate and its creditors a general duty of loyalty."); *In re Wilde Horse Enters., Inc*., 136 B.R. 830, 840 (Bankr. C.D. Cal. 1991) ("In a Chapter 11 proceeding, the attorney for debtor in possession, as an officer of the court charged to perform duties in the administration of the case, has a high fiduciary duty to the estate represented. Moreover, counsel for a corporate Chapter 11 debtor in possession owes a fiduciary duty to the corporate entity estate – the client – and represents *its* interests, ***not those of the entity's principals***. And certainly, the attorney is obligated to act not in his or her own best interest, but in the best interest of all the creditors." (citations omitted; bolded emphasis added)).

3. While the officers and directors of chapter 11 debtors, as well as debtors' counsel, may often benefit from release and exculpation provisions in chapter 11 plans, these parties certainly have no ***right*** to receive such benefits, particularly over objections by the stakeholders disadvantaged by the releases and exculpations. Although the converse is not true, no plan that is otherwise confirmable would become unconfirmable because it failed to exculpate or release a debtor's insiders.

4. It is apparent was has happened in the *Advanta* cases: the Debtors' insiders and their counsel are insisting that the plan include advantages for insiders, despite the good faith and understandable opposition of the Committee. Holding out for these unwarranted benefits comes at no cost to counsel or the insiders, but it imposes significant costs on the Debtors' creditors, who continue to see their limited estates diminish and who are deprived of the time value of money as distributions are delayed. It is inexcusable for estate fiduciaries to delay resolution of chapter 11 cases so they can extract concessions to benefit the debtor's officers and directors.

5. These cases are at a crossroads. By taking the path offered by the Debtors, the Court could continue exclusivity and allow the Debtors to solicit votes on the current plan. The Committee will meet that plan with fierce and justified opposition to its confirmation, and the Debtors will very likely have to "cramdown" most of their stakeholders, who will probably join with the Committee in opposition to the plan due to its improper, insider-benefiting provisions. Then, after confirmation is denied several months later, the process can begin all over again as the Committee proposes and solicits votes on a plan that lacks the improper provisions.

6. An alternative (and better) path is the one offered by the Committee: lift exclusivity now and allow the Committee to propose a plan that substantively mirrors the Debtors' plan other than with respect to that plan's insider benefits. Votes on the two plans could

be solicited simultaneously (preserving estate resources), and creditors can choose between them. In the event that the Court finds the Debtors' plan confirmable notwithstanding its inappropriate insider-benefitting elements and creditor opposition, the Court could and should confirm the Committee's plan if, as is very likely, it is the proposal creditors prefer. *See, e.g.*, 11 U.S.C. § 1129(c); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 181-84 (Bankr. D.N.J. 2010).

7. Put simply, insider releases and exculpations are items to be ***negotiated with***, not ***forced upon***, a bankruptcy estate's stakeholders. Where, as here, an independent fiduciary articulates a good faith basis to oppose such insider preferences, a chapter 11 debtor, its officers and directors, and its counsel should abandon their requests for such preferences for the good of the estate. If – as unfortunately appears to be the case here – a chapter 11 debtor, its officers and directors, and its counsel use delay as a tactic to extract inappropriate, self-dealing concessions, then the Court faces "the proverbial problem of the fox guarding the henhouse" where "the real losers are the unsecured creditors," and the Court should accordingly require these conflicted parties to step aside in favor of a true fiduciary. *See Cybergenics*, 330 F.3d at 573-74.

8. The Debtors and their advisors have lost the confidence of their key stakeholders, including the entire Committee, Marble Arch Investments (*see* Docket No. 988), and Lapis. *Cf. In re All Seasons Indus. Inc.*, 121 B.R. 1002, 1006 (Bankr. N.D. Ind. 1990) (terminating exclusivity because, *inter alia*, the debtor and its "creditors have not been able to find common ground upon which to build a plan of reorganization [and] these creditors have lost faith in the capability and perhaps the integrity of debtor's management"). Allowing the existing plan to go to confirmation in spite of this broad and deep creditor opposition will simply generate further expense and delay. Avoiding such expense and delay provides ample "cause" for the Court to lift exclusivity so the Committee can propose and confirm an appropriate plan.

CONCLUSION

WHEREFORE, Lapis respectfully requests that the Court grant the Motion to Terminate.

Dated: Wilmington, Delaware
December 10, 2010

/s/Marla Rosoff Eskin

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Debtors.[1]	:	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Marla Rosoff Eskin, of Campbell & Levine, LLC, hereby certify that on December 10, 2010, I caused a copy of the *Joinder of Lapis Advisers, LP to the Official Committee of Unsecured Creditors' Expedited Motion to Terminate the Debtors' Exclusivity Periods* to be served upon the attached service list via first-class mail.

Dated: December 10, 2010

/s/Marla Rosoff Eskin
Marla Rosoff Eskin (DE No. 2989)

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