

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., et al., <sup>1</sup>	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR  
ENTRY OF AN ORDER (A) APPROVING  
THE DISCLOSURE STATEMENT; (B) APPROVING  
SOLICITATION PACKAGES AND PROCEDURES FOR THE  
DISTRIBUTION THEREOF; (C) APPROVING THE FORMS OF BALLOTS  
AND MANNER OF NOTICE; (D) APPROVING THE VOTING RECORD DATE,  
SOLICITATION DEADLINE AND VOTING DEADLINE; AND (E) ESTABLISHING  
NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PLAN**

Conexant Systems, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "*Debtors*"),<sup>2</sup> respectfully represent:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
  
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., in Support of First Day Pleadings (the "*First Day Declaration*"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"), on February 28, 2013 (the "*Petition Date*").

3. The bases for the relief requested herein are sections 105(a), 502, 1123(a), 1124, 1125, 1126 and 1128 of the Bankruptcy Code, Rules 2002, 3003, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 2002-1 and 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

**Relief Requested**

4. By this motion, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”), granting the following relief:<sup>3</sup>

- a. approving the Disclosure Statement;<sup>4</sup>
- b. approving the Disclosure Statement Hearing Date and corresponding Disclosure Statement Hearing Notice, substantially in the form annexed as **Exhibit 1** to **Exhibit A** attached hereto and incorporated herein by reference;
- c. approving the Disclosure Statement Objection Deadline as [April 1], 2013 at 4:00 p.m. prevailing Eastern Time;
- d. approving the timeline for soliciting votes and voting on the Plan, including:
  - (i) the Voting Record Date as [April 8], 2013;
  - (ii) the Solicitation Deadline as [April 12], 2013;

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<sup>3</sup> Capitalized terms used but not otherwise defined in this “Relief Requested” section have the meaning ascribed to such terms in the body of this motion.

<sup>4</sup> Contemporaneously herewith, the Debtors filed the *Joint Plan of Reorganization of Conexant Systems, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as modified, amended or supplemented from time to time, the “**Plan**”) and the *Disclosure Statement for the Joint Plan of Reorganization of Conexant Systems, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as modified, amended or supplemented from time to time, the “**Disclosure Statement**”). Capitalized terms used but not otherwise defined in this motion shall have the meaning ascribed to them in the Plan or Disclosure Statement, as appropriate.

- (iii) the Voting Deadline among other things as [May 9], 2013 at 4:00 p.m. prevailing Eastern Time;
- e. approving the materials to be included in the Solicitation Packages, including the following:
  - (i) the forms of the Ballots annexed as Exhibits 2A and 2B to Exhibit A attached hereto, respectively, and incorporated herein by reference;
  - (ii) the Cover Letter, substantially in the form annexed as Exhibit 3 to Exhibit A attached hereto and incorporated herein by reference; and
  - (iii) the Confirmation Hearing Notice, substantially in the form annexed as Exhibit 4 to Exhibit A attached hereto and incorporated herein by reference;
- f. approving the Plan Supplement Notice annexed as Exhibit 5 to Exhibit A attached hereto and incorporated herein by reference;
- g. approving the Non-Voting Status Notices, substantially in the forms annexed as Exhibit 6 and Exhibit 7 to Exhibit A attached hereto and incorporated herein by reference;
- h. approving the form of notices to counterparties to Executory Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan, substantially in the forms annexed as Exhibit 8 and Exhibit 9 to Exhibit A attached hereto and incorporated herein by reference;
- i. approving the Voting and Tabulation Procedures annexed as Exhibit 10 to Exhibit A attached hereto and incorporated herein by reference; and
- j. approving objection procedures with respect to confirmation of the Plan, including:
  - (i) the Plan Objection Deadline as [May 9], 2013 at 4:00 p.m. prevailing Eastern Time and the Plan Objection Response Deadline as [May 13] at 4:00 p.m. prevailing Eastern Time and

- (ii) the Confirmation Hearing Date as [May 16], 2013 at [##:##] [a.m./p.m.] prevailing Eastern Time.

**Basis for Relief**

5. As described in the First Day Declaration, over the past several months the Debtors have engaged in extensive negotiations with the Secured Lender and the Equity Sponsors regarding the details of a comprehensive deleveraging and restructuring. These negotiations ultimately proved successful. On February 26, 2013, the Debtors, the Secured Lender and the Equity Sponsors (collectively, the “*Consenting Parties*”) entered into a restructuring support agreement (the “*Restructuring Support Agreement*”).

6. Pursuant to the Restructuring Support Agreement, a copy of which is attached to the Disclosure Statement as **Exhibit B**, the Consenting Parties are committed to working together to ensure a quick and efficient emergence from chapter 11. Specifically, the Restructuring Support Agreement provides a roadmap for the reorganization of the Debtors as a going concern and outlines the treatment of Claims and Interests provided for in the Plan. Additionally, the Restructuring Support Agreement binds the Consenting Parties to support the Plan if the Debtors are successful in taking the steps necessary to meet certain conditions and milestone deadlines included therein.<sup>5</sup>

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<sup>5</sup> In the event the Plan does not proceed in accordance with the conditions and milestones set forth in the Restructuring Support Agreement, the Restructuring Support Agreement contemplates that the restructuring will be consummated through a sale of substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code (the “*Sale*”) in which the Secured Lender would act as the stalking horse bidder. In the event of the Sale, the Debtors will seek approval of customary bidding procedures that contemplate a hearing to approve the Sale on an expedited timeline.

7. The Plan contemplates a reduction in the Debtors' secured debt obligations through the issuance of the New Notes and New Common Stock. As a result, the Plan contemplates satisfying Claims through the following sources:

- cash on hand to make any payments provided for in the Plan;
- new unsecured payable in kind notes issued by Holdco, referred to in the Plan as the "New Notes," in the amount of \$76 million, which New Notes will not be guaranteed by any other affiliate or subsidiary of Holdco including, Conexant OpCo;
- shares of stock in Holdco, referred to in the Plan as the "New Common Stock;"
- conversion of all of the commitments outstanding under the DIP Facility Credit Agreement into Interests of Holdco.

8. The Plan provides for the following distributions being made to the Debtors' creditors:

- the holder of the Secured Note Claim will receive: (i) 100% of the New Notes and (ii) a Pro Rata distribution of the Secured Claims Recovery Pool calculated in respect to the aggregate amount of all Allowed DIP Facility Claims and the Secured Note Claim; and
- each holder of an Allowed General Unsecured Claims will receive a Pro Rata distribution of the General Unsecured Claims Recovery Pool; *provided, however*, that if the Class of General Unsecured Claims votes to accept the Plan pursuant to section 1129 of the Bankruptcy Code, the Secured Lender will be deemed to waive the Secured Notes Deficiency Claim and its right to participate in the General Unsecured Claims Recovery Pool.

9. It is a condition to the effectiveness of the Plan that Administrative Claims, Priority Non-Tax Claims and Other Secured Claims not exceed the Administrative Claims Cap, the Priority Non-Tax Claims Cap or the Other Secured Claims Cap, as applicable. To the extent

these caps are not exceeded, Administrative Claims, Priority Non-Tax Claims and Other Secured Claims will be satisfied in full. If such claims exceed the applicable cap and no holders of such claims object to or otherwise contest the Plan, holders of Administrative Claims, Priority-Non-Tax Claims and Other Secured Claims will receive a Pro Rata share of the Administrative Claims Cap, the Priority Non-Tax Claims Cap or the Other Secured Claims Cap, as applicable. Additionally, under the Plan, holders of Interests in Conexant will not receive any distribution on account of their Interests.

10. In accordance with the foregoing description of the treatment of holders of Claims and Interests, the Plan contemplates classifying holders of Claims and Interests into certain Classes of Claims and Interests for all purposes, including with respect to voting on the Plan, pursuant to section 1126 of the Bankruptcy Code. The following chart represents the Classes of Claims and Interests under the Plan:

<b>Class</b>	<b>Claim/Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Secured Notes Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Unimpaired	Deemed to Accept
6	Intercompany Interests	Unimpaired	Deemed to Accept
7	Interests in Conexant	Impaired	Deemed to Reject

11. Based on the foregoing (and as discussed in greater detail herein), the Debtors are proposing to solicit votes to accept or reject the Plan from holders of Claims in Classes 3 and 4 (collectively, the “*Voting Classes*”). The Debtors are **not** proposing to solicit votes from holders of Claims and Interests in Classes 1, 2, 5, 6 and 7 (collectively, the “*Non-Voting Classes*”).

**Supporting Authority**

**A. Approval of the Disclosure Statement**

**i. The Disclosure Statement Contains Adequate Information**

12. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide “adequate information” regarding that plan to holders of impaired claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).

13. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) (“The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.”); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) (“[T]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of

creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) (“The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan.”). Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a plan of reorganization. *Century Glove, Inc.*, 860 F.2d at 100.

14. “Adequate information” is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“‘adequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records”); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.3d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *First Am. Bank of New York v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (“the information required will necessarily be governed by the circumstances of the case”).

15. Courts within the Third Circuit and elsewhere acknowledge that determining what constitutes “adequate information” for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”); *In re Phoenix Petroleum Co.*, 278 B.R.



385, 393 (Bankr. E.D. Pa. 2001) (same); *Texas Extrusion Corp. v. Lockheed Corp.* (*In re Texas Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate disclosure’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D. N.J. 2005) (same).

16. Courts look for certain information when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

- the events which led to the filing of a bankruptcy petition;
- the relationship of the debtor with the affiliates;
- a description of the available assets and their value;
- the anticipated future of the company;
- the source of information stated in the disclosure statement;
- the present condition of the debtor while in chapter 11;
- claims asserted against the debtor;
- the estimated return to creditors under a chapter 7 liquidation;
- the future management of the debtor;
- the chapter 11 plan or a summary thereof;
- financial information, valuations and projections relevant to the creditors’ decision to accept or reject the chapter 11 plan;
- information relevant to the risks posed to creditors under the plan;
- the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

- litigation likely to arise in a nonbankruptcy context; and
- tax attributes of the debtor.

See *In re U.S. Brass Corp.*, 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996); see also *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *In re U.S. Brass Corp.*, 194 B.R. at 424; see also *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”).

17. The Disclosure Statement contains pertinent information that allows holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan, including the following key sections and information contained therein:

- a. *The Debtors’ Corporate History, Structure and Business Overview*: An overview of the Debtors’ corporate history, business operations, organizational structure and capital structure, which is described in detail in the First Day Declaration attached as **Exhibit C** to the Disclosure Statement;
- b. *Events Leading to the Chapter 11 Filings*: An overview of the Debtors’ out-of-court restructuring efforts in response to deteriorating economic conditions, including the negotiations with respect to the Plan and the Restructuring Support Agreement, which is described in detail in the First Day Declaration attached as **Exhibit C** to the Disclosure Statement;
- c. *Relief Granted During the Chapter 11 Cases*: A summary of the motions filed on the Petition Date, which is described in detail in the First Day Declaration attached as **Exhibit C** to the Disclosure Statement;

- d. *Projected Financial Information:* A projected consolidated income statement, which is attached as **Exhibit E** to the Disclosure Statement;
- e. *Risk Factors:* Certain risks associated with the Debtors' businesses, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement;
- f. *Solicitation and Voting Procedures:* A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan including a copy of the Order once entered, attached as **Exhibit D** to the Disclosure Statement;
- g. *Confirmation of the Plan:* Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, including financial projections (attached as **Exhibit E** to the Disclosure Statement), a valuation of the Debtors (attached as **Exhibit F** to the Disclosure Statement) and a liquidation analysis (attached as **Exhibit G** to the Disclosure Statement);
- h. *Certain Securities Laws Matters:* A description of the applicability of section 1145 of the Bankruptcy Code and the issuance of New Common Stock under the Plan;
- i. *Certain United States Federal Income Tax Consequences of the Plan:* A description of certain U.S. federal income tax law consequences of the Plan; and
- j. *Recommendation:* A recommendation by the Debtors that holders of Claims in the Voting Classes should vote to accept the Plan.

18. Based on the foregoing, the Debtors submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information set forth above in a manner that provides adequate information to holders of Claims entitled to vote to accept or reject the Plan.

**ii. The Disclosure Statement Provides Sufficient Notice of Injunction, Exculpation and Release Provisions in the Plan**

19. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c).

20. Article VIII of the Plan describes in detail the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing. Further, the language in Article VIII of the Plan is capitalized, making it conspicuous to anyone who reads it. Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by conspicuously describing the conduct and parties enjoined by the Plan.

**B. Approval of the Disclosure Statement Hearing Notice**

21. Bankruptcy Rule 3017(a) requires that notice of the hearing to consider the proposed disclosure statement be provided to creditors and other parties in interest. *See* Fed. R. Bankr. P. 3017(a) (providing that after a disclosure statement is filed, it must be mailed with the notice of the hearing to consider the disclosure statement and any objections or modifications thereto on no less than 28 days' notice thereof); *see also* Fed. R. Bankr. P. 2002(b) (requiring not less than 28 days' notice by mail of the time for filing objections and the hearing to consider the approval of a disclosure statement). Additionally, Local Rule 3017-1(a) provides that, upon the filing of a disclosure statement, the proponent of the plan shall obtain hearing and objection dates from the Court and shall provide notice of those dates in accordance with Bankruptcy Rule 3017. Del. Bankr. L.R. 3017-1(a).

22. The Debtors will serve all known creditors with a copy of a notice in the form annexed as **Exhibit 1** to **Exhibit A** attached hereto and incorporated herein by reference (the “*Disclosure Statement Hearing Notice*”). The Disclosure Statement Hearing Notice identifies the following: (a) the date, time and place of the hearing to consider the Disclosure Statement (the “*Disclosure Statement Hearing*”); (b) the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) can be obtained; and (c) the deadline and procedures for filing objections to the approval of the Disclosure Statement. Additionally, the Debtors will distribute copies of the Disclosure Statement, including exhibits, in CD-ROM format to parties on the list of all parties required to be notified under Rule 2002 of the Bankruptcy Rules and Rule 2002-1 of the Local Rules (the “*2002 List*”).

**C. Approval of the Disclosure Statement Objection Deadline and Disclosure Statement Hearing Date**

23. In accordance with Local Rule 3017-1(a), the Debtors propose that the Disclosure Statement Hearing be scheduled for [April 8], 2013 (the “*Disclosure Statement Hearing Date*”); as a result, the Debtors have set the deadline to object to the Disclosure Statement for [April 1], 2013 at 4:00 p.m. prevailing Eastern Time (the “*Disclosure Statement Objection Deadline*”) and the deadline to respond to objections to the Disclosure Statement for [April 3], 2013 at 4:00 p.m. prevailing Eastern Time (the “*Disclosure Statement Response Deadline*”). Accordingly, all parties in interest will have had no less than 28 days’ notice of the deadline to object to the approval of the Disclosure Statement in accordance with Bankruptcy Rules 3017(a) and 2002(b). Thus, the Debtors submit that they have provided adequate notice of the Disclosure Statement Hearing and request that the Court approve such notice as appropriate and in compliance with the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

**D. Approval of the Materials and Timeline for Soliciting Votes on the Plan**

i. **Approval of the Voting Record Date, Solicitation Deadline and Voting Deadline**

24. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Fed. R. Bankr. P. 3018(a). Additionally, Local Rule 3017-1(b) provides that “[t]he plan proponent shall timely file a motion to be heard at a disclosure statement hearing for approval of the voting procedures, including the form of ballots, the voting agent and the manner and time of voting.” Del. Bankr. L.R. 3017-1(b). Similarly, Bankruptcy Rule 3017(c) provides that before approving the disclosure statement, the Court must fix a time within which the holders of claims and interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

25. The Debtors request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) and Local Rule 3017-1(c) to establish [April 8], 2013, the date of the Disclosure Statement Hearing (or, if such hearing is not completed in one day, the first day of the Disclosure Statement Hearing), as the date for determining: (a) the holders of Claims entitled to receive Solicitation Packages; (b) the holders of Claims entitled to vote to accept or reject the Plan; and (c) whether Claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of such Claim (the “*Voting Record Date*”). Moreover, the Debtors propose that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the holder of such

Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim *only if*: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the holder of such Claim as of the Voting Record Date.

26. The Debtors request that, after the Debtors distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by [April 12], 2013 (the “**Solicitation Deadline**”), the Court require that all holders of Claims entitled to vote on the Plan complete, execute and return their customized ballots (the “**Ballots**” and each a “**Ballot**”) so that they are **actually received** by the Voting and Claims Agent on or before [May 9], 2013 at 4:00 p.m. prevailing Eastern Time (the “**Voting Deadline**”).

27. The foregoing timing and materials will afford holders of Claims entitled to vote on the Plan at least 28 days within which to review and analyze such materials and subsequently make an informed decision as to whether to vote to accept or reject the Plan before the Voting Deadline consistent with the requirements of the applicable Bankruptcy Rules. *See* Fed. R. Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed and any other information that the court may direct to certain holders of claims). Accordingly, the Debtors request that the Court approve the form of, and the Debtors’ proposed procedures for distributing, the Solicitation Packages to the holders of Claims in the Voting Classes.

**ii. Approval of the Form of Ballots**

28. In accordance with Bankruptcy Rule 3018(c), the Debtors have prepared and customized the Ballots. Although based on Official Form No. 14, the Ballots have been modified to (a) address the particular circumstances of these Chapter 11 Cases and (b) include certain additional information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed Ballots for each Voting Class are annexed as **Exhibits 2A** and **2B** to **Exhibit A** attached hereto.

29. The Debtors respectfully submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

**iii. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan**

30. Bankruptcy Rule 3017(d) specifies the materials to be distributed to holders of allowed claims and/or equity interests upon approval of a disclosure statement, including the court-approved plan and disclosure statement and notice of the time within which acceptances and rejections of the plan may be filed. Fed. R. Bankr. P. 3017(d).

31. In accordance with this requirement, the Debtors propose to send the solicitation materials and documents to be included in the solicitation packages listed below (each, a "***Solicitation Package***" and, collectively, the "***Solicitation Packages***") to provide holders of Claims in the Voting Classes with the information they need to be able to make informed decisions with respect to how to vote on the Plan. Specifically, on or before the Solicitation Deadline (defined below), the Debtors will cause the Solicitation Packages to be distributed by first-class U.S. mail to those holders of Claims in the Voting Classes. Each Solicitation Package will include the following materials:

- a. a Ballot, substantially in the form annexed as **Exhibits 2A** and **2B** to **Exhibit A** attached hereto and incorporated



herein by reference, as applicable, together with detailed voting instructions and a pre-addressed, postage prepaid return envelope;

- b. the letter to be sent by the Debtors to holders of Claims entitled to vote on the Plan explaining the solicitation process and urging such parties to vote in favor of the Plan (the "**Cover Letter**"), substantially in the form annexed as **Exhibit 3** to **Exhibit A** attached hereto and incorporated herein by reference;
- c. the Disclosure Statement (and exhibits thereto, including the Plan);
- d. the Order;
- e. the Confirmation Hearing Notice (defined below), substantially in the form annexed as **Exhibit 4** to **Exhibit A** attached hereto and incorporated herein by reference; and
- f. such other materials as the Court may direct.

32. The Debtors request that they be authorized to distribute the Plan, the Disclosure Statement and the Order to holders of Claims entitled to vote on the Plan in CD-ROM format. The Ballots, the Cover Letter and the Confirmation Hearing Notice will *only* be provided in paper format. Distribution in this manner will translate into significant monetary savings for the Debtors' estates (the Plan, the Disclosure Statement and the proposed Order, collectively, total approximately 150 pages) and will reduce production time as generating CD-ROMs can be accomplished faster than printing documents. Bankruptcy courts in this district have permitted debtors to transmit solicitation documents in CD-ROM format in other large chapter 11 cases in the interest of saving printing and mailing costs. *See, e.g., In re Neb. Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. Apr. 12, 2012) (authorizing the debtors to transmit solicitation documents in CD-ROM format); *In re Appleseed's Intermediate Holdings, LLC*, No. 11-10160 (KG) (Bankr. D. Del. Mar. 1, 2011) (same); *In re OTC Holdings Corp.*, No. 10-12636 (BLS) (Bankr. D. Del. Nov. 11, 2010) (same); *In re Atrium Corp.*, No. 10-10150 (BLS) (Bankr. D. Del.

Mar. 19, 2010) (same); *In re Spansion Inc.*, No. 09-10690 (KJC) (Bankr. D. Del. Dec. 18, 2009) (same); *In re Muzak Holdings, LLC*, No. 09-10422 (KJC) (Bankr. D. Del. Nov. 2, 2009) (same).<sup>6</sup>

33. Additionally, the Debtors will provide (a) complete Solicitation Packages to the Office of the United States Trustee for the District of Delaware (“*U.S. Trustee*”) and counsel to the Administrative Agents and (b) the Order (in CD-ROM format) and the Confirmation Hearing Notice to all parties on the 2002 List as of the Voting Record Date (defined below). Any party who receives a CD-ROM, but who would prefer paper format, may contact BMC Group, Inc. (the “*Voting and Claims Agent*”)<sup>7</sup> and request paper copies of the corresponding materials previously received in CD-ROM format (to be provided at the Debtors’ expense). The Debtors will not mail Solicitation Packages or other solicitation materials to holders of Claims that have already been paid in full during these Chapter 11 Cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court.

34. The Debtors respectfully request that the Voting and Claims Agent be authorized (to the extent not authorized by another order of the Court) to assist the Debtors in (a) distributing the Solicitation Package; (b) receiving, tabulating and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages and all other related documents and matters related thereto, including the procedures and requirements for voting to

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors’ counsel.

<sup>7</sup> Contemporaneously herewith, the Debtors have filed applications seeking to retain and employ BMC Group, Inc. to provide noticing and claims services and serve as Voting and Claims Agent.

accept or reject the Plan and for objecting to the Plan; (d) soliciting votes on the Plan; and (e) if necessary, contacting creditors regarding the Plan.

**iv. Approval of the Notice of Confirmation Hearing**

35. The Debtors will serve notice of the hearing to consider Confirmation of the Plan (the “*Confirmation Hearing Notice*”), annexed as **Exhibit 4** to **Exhibit A**, on all known holders of Claims and Interests and the 2002 List (regardless of whether such parties are entitled to vote on the Plan) by no later than [April 9], 2013, which will provide all parties in interest more than 28 days’ notice of (a) the Plan Objection Deadline and (b) the Confirmation Hearing. The Confirmation Hearing Notice will include the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order and all other materials in the Solicitation Package (*excluding* Ballots) from the Voting and Claims Agent and/or the Court’s website via PACER; (b) notice of the Voting Deadline; (c) notice of the date by which the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

36. Bankruptcy Rule 2002(l) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” Fed. R. Bankr. P. 2002(l). Therefore, in addition to the foregoing distribution of the Confirmation Hearing Notice, the Debtors will publish the Confirmation Hearing Notice (in a format modified for publication) within seven business days of the Solicitation Deadline in the national edition of *The New York Times* (the “*Publication Notice*”). The Debtors believe that the Publication Notice will provide sufficient notice of, among other things, the entry of the Order, the Voting Deadline, the Plan Objection Deadline and the Confirmation Hearing to parties who did not

otherwise receive notice thereof by mail. Additionally, service and publication of the Confirmation Hearing Notice comports with the requirements of Bankruptcy Rule 2002 and should be approved.

**v. Approval the Plan Supplement Notice**

37. The Plan defines “Plan Supplement” to mean the compilation of documents and forms of documents, schedules and exhibits to the Plan that are filed by the debtors no later than seven days before the Confirmation Hearing on notice to parties in interest. *See* Plan at Art. I.A. 84. The Plan Supplement will include the following materials in connection with confirmation (each as defined in the Plan): (a) the New By-Laws; (b) the New Certificates of Incorporation; (c) the Rejected Executory Contract and Unexpired Lease List (d) the Assumed Executory Contract and Unexpired Lease List; (e) a list of retained Causes of Action, if any; (f) the identification of any Disbursing Agent other than the Reorganized Debtors; (g) the identity of the members of the Holdco Board and the New Subsidiary Boards; (h) the material terms of the Emergence Bonus Plan; (i) the material terms of the New Notes Indenture; and (j) the material terms of the New Working Capital Facility.

38. To ensure that all holders of Claims receive notice of the Debtors’ filing of the Plan Supplement, the Debtors propose to send notice of the filing of the Plan Supplement (the “*Plan Supplement Notice*”) in substantially the form annexed as **Exhibit 5** to **Exhibit A** attached hereto substantially on the date the Debtors file the Plan Supplement, or as soon as practicable thereafter.

**vi. Approval of the Form of Notices to Non-Voting Classes**

39. As discussed above, the Non-Voting Classes are *not* entitled to vote on the Plan. As a result, they will *not* receive Solicitation Packages and, instead, the Debtors propose that such parties receive an appropriate form notifying such holder of its non-voting status (each, a

“*Non-Voting Status Notice*”). Specifically, in lieu of solicitation materials, the Debtors propose to provide the following to holders of Claims and Interests in Non-Voting Classes:

- a. *Not Impaired Claims – Conclusively Presumed to Accept:* Holders of Claims in Classes 1 and 2 are not Impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form annexed as Exhibit 6 to Exhibit A attached hereto, in lieu of a Solicitation Package.
- b. *Impaired Claims and Equity Interests – Deemed to Reject:* Holders of Claims and Interests in Class 7 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form annexed as Exhibit 7 to Exhibit A attached hereto, in lieu of a Solicitation Package.
- c. *Intercompany Claims and Interests:* Holders of Class 5 Intercompany Claims and Class 6 Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to 1126(f) of the Bankruptcy Code. Therefore the Debtors will not provide holders of Class 5 Intercompany Claims or holders of Class 6 Intercompany Interests with a Solicitation Package or any other type of notice.

40. Each of the Non-Voting Status Notices will describe, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order and all other materials in the Solicitation Package (*excluding* Ballots) from BMC Group, Inc. (the Voting and Claims Agent) and/or the Court’s website via PACER; (b) a disclosure regarding the settlement, release, exculpation and injunction language set forth in Article VIII of the Plan; (c) notice of the Plan Objection Deadline (defined below); and (d) notice of the Confirmation Hearing Date (defined below) and information related thereto.

41. The Debtors believe that the mailing of Non-Voting Status Notices in lieu of Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly,

unless the Court orders otherwise, the Debtors do not intend to distribute Solicitation Packages to holders of Claims and Interests in the Non-Voting Classes.

42. The Debtors further request that they not be required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these Chapter 11 Cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

**vii. Approval of Notices to Contract and Lease Counterparties**

43. Article V.A. of the Plan provides that each of the Debtors' Executory Contracts and Unexpired Leases will be deemed rejected as of the Effective Date unless such agreement (a) was previously assumed or rejected by the Debtors, (b) was previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to assume filed on or before the Effective Date or (d) is identified as an Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Lease List. *See* Plan at Art. V.A. Additionally, Article V.C. of the Plan provides that the Debtors will provide Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties listed on the Assumed Executory Contracts and Unexpired Lease List. *Id.* at Art. V.C.

44. To ensure that counterparties to Executory Contracts and Unexpired Leases receive notice of assumption or rejection of their Executory Contract or Unexpired Lease (and any corresponding Cure Claim) pursuant to the Plan, the Debtors will mail a notice to such parties in substantially the form annexed as **Exhibit 8** and **Exhibit 9** to **Exhibit A** attached hereto, as appropriate, within the time periods specified in the Plan.

**E. Approval of the Voting and Tabulation Procedures**

45. Section 1126(c) of the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.

11 U.S.C. § 1126(c). Additionally, Bankruptcy Rule 3018(c) provides, in part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c).

46. Consistent with these requirements, the Debtors propose to use the voting procedures and standard assumptions in tabulating Ballots (the “*Voting and Tabulation Procedures*”) as set forth in Exhibit 10 to Exhibit A attached hereto and incorporated herein by reference.

47. The Voting and Tabulation Procedures include specific voting and tabulation requirements and procedures, as follows:

**i. Completion of Ballots**

48. To ease and clarify the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. Specifically, the Voting and Tabulation Procedures provide that the Debtors not count a Ballot if it is, among other things, illegible, submitted by a holder of a Claim that is not entitled to vote on the Plan, unsigned or not clearly marked. Furthermore, the Debtors, subject to contrary order of the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be

documented in the Voting Report

**ii. General Ballot Tabulation and Voting Procedures**

49. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to holders of Claims and tabulation of such votes.

50. The Debtors believe that the proposed Voting and Tabulation Procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify any obligations of holders of Claims entitled to vote to accept or reject the Plan and will create a straightforward process by which the Debtors can determine whether they have satisfied the numerosity requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Debtors submit that the Voting and Tabulation Procedures are in the best interests of their estates, holders of Claims and other parties in interest, and that good cause supports the relief requested herein.

51. The Debtors respectfully request that the Court approve the Voting and Tabulation Procedures annexed as **Exhibit 10** to **Exhibit A** attached hereto, which are consistent with section 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a). The Debtors submit that they have shown good cause for the approval of the Voting and Tabulation Procedures set forth herein and, therefore, request that the Court approve the Voting and Tabulation Procedures.

**F. Approval of Procedures for Confirming the Plan**

**i. Setting the Confirmation Hearing Date**

52. Section 1128 of the Bankruptcy Code provides that a court shall hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, a court shall fix a time for the hearing on confirmation of a plan. Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c) and section 1128 of the



Bankruptcy Code, the Debtors request that the Court establish [May 16], 2013 at [##:##] [a.m./p.m.] prevailing Eastern Time (the “*Confirmation Hearing Date*”) as the date and time for the hearing at which the Court will consider Confirmation of the Plan (the “*Confirmation Hearing*”). The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the 2002 List and other parties entitled to notice.

**ii. Approval of the Procedures for Filing Objections to the Plan**

53. Bankruptcy Rules 2002(b) and (d) require no less than 28 days’ notice to all holders of Claims of the time fixed for filing objections to the hearing on confirmation of a chapter 11 plan. To satisfy this requirement, the Debtors request that the Court establish [May 9], 2013 at 4:00 p.m. prevailing Eastern Time as the date by which objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the “*Plan Objection Deadline*”).

54. The Debtors also request that the Court direct the manner in which parties in interest may object to confirmation of the Plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will require that objections to confirmation of the Plan or requests for modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules, the Local Rules and any orders of the Court;
- c. state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and

- d. be filed with the Court (contemporaneously with a proof of service) upon the notice parties so to be **actually received** on or before the Plan Objection Deadline.

55. The Debtors believe that the Plan Objection Deadline for filing and service of objections (and proposed modifications, if any) will afford the Court, the Debtors and other parties in interest reasonable time to consider the objections and proposed modifications prior to the Confirmation Hearing.

#### **Non-Substantive Modifications**

56. The Debtors request authorization to make non-substantive changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan and any other materials in the Solicitation Packages before distribution.

#### **Notice**

57. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' prepetition secured lender and debtor in possession lender; (d) the agent for the Debtors' prepetition secured notes; (e) counsel to each of the prepetition equity holders; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the Delaware State Attorney General; (i) the Office of the United States Attorney General for the State of Delaware; (j) the Internal Revenue Service; and (k) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

58. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of page intentionally left blank.]*

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other and further relief as may be appropriate.

Dated: February 28, 2013  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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