Testimony
Of
Lori Swanson
Minnesota Attorney General

Domestic Policy Subcommittee
Oversight and Government Reform
Wednesday, July 22, 2009
2154 Rayburn HOB
2:00 p.m.

"'Arbitration' or 'Arbitrary': The Misuse of Mandatory Arbitration to Collect Consumer Debts."

Good afternoon. Thank you for the opportunity to testify before the Committee on the important topic of mandatory arbitration in consumer disputes, which has the potential to affect virtually every American citizen.

I. Mandatory Arbitration in Consumer Disputes.

The right to have disputes resolved through an impartial judge or jury is deeply imbedded in our democracy and our values. In recent years, however, virtually every American consumer—in one contract or another—has been forced to contract away their right to have their day in court. Credit card companies, cell phone companies, banks, and other corporations frequently place—in the fine print of their consumer contracts—what are known as mandatory pre-dispute arbitration clauses. Through these clauses, the consumer waives—in advance—his or her right to have any dispute resolved in court and instead must resolve the dispute in arbitration by an arbitration administrator selected by the corporation. This is true even if the consumer does not see the arbitration clause. For example, if a credit card company sends the consumer an arbitration clause in an envelope stuffer, the consumer may be deemed to have agreed to arbitration just by keeping the card. In most cases, consumers are not even aware they waived their right to go to court.

The Federal Arbitration Act—passed in 1925—was originally designed to allow merchants of relatively equal bargaining power to agree to arbitration after a dispute arose to mutually select an arbitrator to resolve the dispute. Today, credit card and other companies have expanded arbitration to a wide range of consumer contracts where the consumer has no bargaining power. Through these clauses, which appear in millions of consumer contracts, hundreds of thousands of consumer disputes are resolved each year not in open court, but behind closed doors in a system of private arbitration.

II. National Arbitration Forum Lawsuit and Consent Judgment.

On July 14, 2009 our office filed a lawsuit against the National Arbitration Forum—the largest arbitration company in the country for consumer credit disputes—alleging that it misrepresented its independence and hid from consumers and the public its extensive ties to the collection industry. (A copy of the Complaint is attached as Exhibit A.)

The lawsuit alleged that the National Arbitration Forum deceptively represented to consumers and the public that it was independent and neutral, operated like an impartial court system, and was not affiliated with any party or took sides between parties.

The lawsuit alleged that the Forum worked behind the scenes—alongside creditors and against the interests of ordinary consumers—to convince credit card companies and other creditors to deprive consumers of their legal rights by inserting arbitration provisions in their customer agreements and then to appoint the Forum to decide the disputes. The lawsuit alleged that the Forum paid commissions to executives to convince creditors to put mandatory arbitration clauses in their customer agreements and to thereafter convince creditors to use the Forum to decide those claims, in order to generate arbitration filings in the Forum—and hence, revenue—for itself. In soliciting creditors to use its arbitration services, the Forum made representations that aligned itself against consumers, including, for example, that "[t]he customer does not know what to expect from Arbitration and is more willing to pay," that consumers "ask you to explain what Arbitration is then basically hand you the money," and that "[y]ou [the creditor] have all the leverage [in arbitration] and the customer really has little choice but to take care of this account." (A copy of the Forum's presentation is attached as Exhibit B.)

The lawsuit also alleged that the Forum had financial ties to the collection industry. Beginning in 2006 and through 2007, Accretive—a family of New York private equity funds—

engineered two transactions. In the first transaction, Accretive formed several equity funds under the name "Agora" (meaning "Forum" in Greek), which invested $42 million in the Forum and obtained governance rights in it. In the second transaction, three of the country's largest debt collection law firms—Mann Bracken of Georgia, Wolpoff & Abramson of Maryland, and Eskanos & Adler of California—merged into one large national law firm called Mann Bracken. Accretive then acquired the majority interest in a debt collection agency called Axiant, which acquired the collections operations of Mann Bracken. Through these transactions, Accretive took control of one of the country's largest debt collection enterprises and became affiliated with the Forum, the country's largest consumer collection arbitration company. The lawsuit alleged that, in 2006, the Forum processed just over 214,000 consumer collection arbitration claims, of which 125,000, or nearly 60 percent, were filed by these firms.

In the course of our year-long investigation, we heard from arbitrators who were "deselected"—or not given more cases—after ruling for the consumer or not awarding the credit card company any attorneys' fees. We heard from employees who were told to find arbitrators who were anti-consumer and not to assign additional cases to arbitrators who asked the creditors to provide evidence to support their claims. We also interviewed over 100 consumers who were confused by the process, were unaware they had agreed to arbitration, and did not feel they got a fair shake in arbitration.

On July 17, 2009 the company signed a Consent Judgment that resolves the lawsuit. Under the Consent Judgment, the company is barred from the business of arbitrating credit card and other consumer disputes and must stop accepting any new consumer arbitrations or in any manner participate in the processing or administering of new consumer arbitrations. This means that the company will permanently stop administering arbitrations involving consumer debt,

including credit cards, consumer loans, telecommunications, utilities, health care, and consumer leases.

The investigation and the lawsuit has uncovered an underlying problem with mandatory pre-dispute arbitration clauses in consumer contracts. As the problems highlighted by the lawsuit illustrate, it is more important than ever for Congress to meaningfully protect consumers from forced arbitration arising out of fine-print contracts. In the meantime, I hope that other arbitration companies like the American Arbitration Association (arguably the next biggest arbitration administrator of consumer disputes) will announce their intention not to exploit consumers by arbitrating claims arising out of fine-print consumer contracts.

III. The U.S. Government's Small Business Administration Apparently Finances One of the Biggest Debt Collection Enterprises in the Nation.

As I noted above, our investigation found that the National Arbitration Forum is owned in part by a hedge fund called Accretive, LLC of New York. Accretive also owns Axiant, LLC, one of the country's largest debt collectors, which in turn owns the collections operations of the Mann Bracken law firm, the largest debt collection law firm in the country.

During our investigation, it was determined that in 2004, the Small Business Administration issued a grant in the amount of $100 million to Accretive Investors SBIC, LP. (A copy of a website summarizing the grant is attached as Exhibit C.) The grant was issued under federal rules that require Accretive Investors SBIC to invest the money in small businesses whose operations are in the public interest. We determined that in 2008, Accretive Investors SBIC acquired 7.5 percent of Axiant, the debt collector which owns the collections operations of the Mann Bracken law firm. (*See* chart found in Exhibit A at 50.) Finally, we determined that in 2009 Accretive applied for and received permission from the SBA to make what we suspect to

be a very large investment in credit card debt through Axiant—its own downstream subsidiary. (A copy of the Federal Registry description of the application is attached as Exhibit D.)

On June 8, 2009, our office asked the SBA for documentation concerning the extent to which the federal grant money was utilized by Accretive and Axiant. Even though we are a law enforcement agency, the SBA—after consulting with the Accretive hedge fund—refused to produce unredacted records to us. Instead, on July 13, 2009, the SBA produced documents that were highly redacted and provided absolutely no information about how and the extent to which SBA money was used on this transaction. (The redacted documents produced by the SBA are attached as Exhibit E.)

It is troubling that the SBA apparently believes that its mission is to finance the acquisition of debt collectors who acquire bank debt from bailed-out national banks and then use the funds to harass citizens through questionable debt collection techniques. But this appears to be what occurred.

It is even more troubling that the SBA would apparently act in concert with the debt collector to hide information from a state law enforcement agency on how the money was spent. But this is also what apparently occurred.

I hope that this Committee will look into this matter and demand that the SBA produce information documenting the extent to which federal SBA money was used for the acquisition and collection of credit card debt or otherwise spent to finance this debt collection operation. I urge the Committee to require the SBA to provide it with this information.

IV. Problems with Forced Arbitration in Consumer Contracts.

Our interviews of consumers highlighted numerous problems with the arbitration of consumer disputes arising out of forced arbitration clauses in fine-print contracts. Mandatory

pre-dispute arbitration clauses that are hidden in the fine print of consumer contracts are fundamentally unfair to the consumer. I say this for several reasons:

First, mandatory pre-dispute arbitration agreements are nearly always the product of unequal bargaining power between the consumer and the business. In almost every interview we conducted of consumers, we found that the consumer was not aware of the arbitration provision. In most cases, the consumer never saw the provision. The consumer is given virtually no opportunity to negotiate or reject the provision. Yet, through these provisions, consumers give up their right to have their day in court.

Second, it is apparent from interviews with consumers, arbitrators, and employees of the Forum that arbitrators have a powerful incentive to favor the dominant party in an arbitration; namely, the corporation. Indeed, there is a term commonly used in the arbitration industry called "repeat player bias," describing the phenomena where an arbitrator is more likely to favor the party that is likely to send future cases. This bias does not exist in a court, where the judge is not reliant on a dominant player for his or her future income.

Third, credit card companies and other corporations select which arbitration companies they want to appoint to process their disputes, and arbitration companies compete for this lucrative business. If a particular corporation selects a particular arbitration company to resolve the corporation's disputes, the arbitration company makes money. If a particular arbitration company is not "friendly" enough to the corporation, the corporation can simply select another arbitration company to resolve its claims. Similarly, the arbitration company wields great power in selecting which arbitrators will be in its network. In the case of the National Arbitration Forum, arbitrators and employees told us that arbitrators who issued an award against the corporation, or who failed to award attorneys' fees against the consumer, were simply

"deselected" and not appointed to future proceedings. One retired state court justice told us that he was not assigned any more cases after he ruled that the credit card company was not entitled to attorneys' fees—fees that were not allowed under state law. Another arbitrator, a professor at a leading national law school, testified in Congress last year that she did not receive any more cases after ruling in favor of a consumer. Even if the arbitration company does not "deselect" arbitrators who rule for consumers, corporations who are repeat players know who those arbitrators are and can remove them from hearing the company's cases far more readily than they could remove a district court judge.

Fourth, because the consumer is unaware of the mandatory arbitration provision, in many cases the consumer does not recognize the significance of the arbitration notice served on them. Since they did not know that they agreed to arbitration, and were unfamiliar with the arbitration process or the arbitration administrator, consumers tell us they did not know they were obligated to respond to the arbitration notice.

Fifth, our interviews with consumers showed that they were unaware of their rights in arbitration, did not know they could submit exhibits or evidence, and were often not aware that there would only be a "document hearing" to resolve the case. For instance, victims of identity theft were not told to submit a copy of a police report, even though arbitrators were advised that, absent such documentation, the claim of identity theft should be ignored. By contrast, most district court judges generally will assist *pro se* litigants in articulating the facts that might help them prove their defense.

Sixth, due process protections found in court are often lacking in arbitration. For instance, consumers subject to a mandatory arbitration clause usually have no right to appeal to a court if there is an adverse arbitration ruling. Similarly, the arbitrator's decision is usually

not supported by a written order, so the consumer does not understand the basis for the decision and therefore questions the integrity of the process. Other limitations include the fact that discovery in arbitration proceedings is limited. Some consumers indicated that they never received notice of the proceeding, because service of process rules are not as precise as court.

In short, while our Consent Judgment with the National Arbitration Forum may have removed a problem company from the consumer arbitration marketplace, it did not and cannot solve the systemic problems with mandatory pre-dispute arbitration clauses in fine-print consumer contracts. The Federal Arbitration Act has been interpreted by the federal courts to prohibit state legislatures from meaningfully regulating these clauses. Therefore, Congress is the only governmental entity that can protect consumers from the placement of mandatory arbitration clauses in consumer contracts—and I strongly encourage it to do so.

Thank you for inviting me to this hearing.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

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BY _____ DEPUTY
HENNEPIN COUNTY DISTRICT COURT ADMINISTRATOR

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

National Arbitration Forum, Inc.,
National Arbitration Forum, LLC, and
Dispute Management Services, LLC, d/b/a
Forthright,

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against defendants National Arbitration Forum, Inc., National Arbitration Forum, LLC, and Dispute Management Services, LLC, d/b/a Forthright (collectively, "National Arbitration Forum," "Forum," or "Defendants"), alleges as follows:

INTRODUCTION

1. Just about every American has a credit card. The credit card companies often require—deep in the fine print of the consumer agreement—that the consumer forfeit his or her right to have any dispute resolved by a judge or jury. Instead, the agreements often require that any disputes be resolved exclusively through a private system of binding arbitration—and frequently through the National Arbitration Forum. The Forum represents to the public, the courts, and consumers that it is independent, operates like an impartial court system, and is not affiliated with any party. The consumer does not know that the Forum works alongside creditors

behind the scenes—against the interests of consumers—to convince creditors to place mandatory pre-dispute arbitration clauses in their customer agreements and to appoint the Forum as the arbitrator of any disputes that may arise in the future. The Forum does this so that creditors will file arbitration claims against consumers in the Forum, thereby generating revenue for it.

2. The consumer also does not know—and the Forum hides from the public—that the Forum is financially affiliated with a New York hedge fund group that owns one of the country's major debt collection enterprises. Beginning in 2006 and through 2007, Accretive, LLC (a family of New York hedge funds under the control of an investment manager named J. Michael Cline and his associates), engineered two transactions. In the first transaction, Accretive formed several private equity funds under the name "Agora" (meaning "Forum" in Greek), which in turn invested $42 million in the National Arbitration Forum and obtained governance rights in it. In the second transaction, three of the country's largest debt collection law firms (Mann Bracken of Georgia, Wolpoff & Abramson of the District of Columbia, and Eskanos & Adler of California) merged into one large national law firm called Mann Bracken, LLP. Accretive then formed and funded (partly using federal money from the U.S. Small Business Administration) a debt collection agency called Axiant, LLC, which acquired the assets and collections operations of Mann Bracken.

3. Through these transactions, the Accretive hedge fund group simultaneously took control of one of the country's largest debt collectors and became affiliated with the Forum, the country's largest debt collection arbitration company. In 2006, the Forum processed 214,000 consumer debt collection arbitration claims, of which 125,000—or nearly 60 percent—were filed by the law firms listed above. The Forum conceals its affiliations with the collections industry

through extensive affirmative representations, material omissions, and layers of complex and opaque corporate structuring.

4. Consumers also do not know that—despite representing to the public that it has "no relationship with any party" and does not "counsel our users"—the Forum works closely with creditors behind the scenes to: (1) encourage them to file arbitration claims as an alternative way to collect debt from consumers; (2) draft arbitration clauses, advise creditors on arbitration legal trends, and in some cases, help them draft claims to be filed against consumers; and (3) refer them to debt collection law firms, which then file arbitration claims against consumers in the Forum. In soliciting creditors to use its arbitration services, the Forum makes representations that align itself against consumers, including, for example, that "[t]he customer does not know what to expect from Arbitration and is more willing to pay," that consumers "ask you to explain what arbitration is then basically hand you the money," and that "[y]ou [the creditor] have all the leverage [in arbitration] and the customer really has no choice but to take care of the account."

5. Through its conduct, the National Arbitration Forum has violated Minnesota's statutory prohibitions against consumer fraud, deceptive trade practices, and false advertising.

PARTIES

6. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Ch. 8, including Minn. Stat. §§ 8.01, 8.31, and 8.32, and under §§ 325.F.67 and 325F.70, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

7. National Arbitration Forum, Inc. ("NAF, Inc.") is a privately held, for-profit Minnesota corporation. NAF, Inc.'s registered address and principal place of operations is 6465

Wayzata Boulevard, St. Louis Park, MN 55426. NAF, Inc. is the holder of the assumed name "National Arbitration Forum" and also does business under the names "National Arbitration Forum" and "Forum."

8. National Arbitration Forum, LLC ("NAF, LLC") is a privately held, for-profit Delaware limited liability company. NAF, LLC's registered address and principal place of operations is the same as NAF, Inc's: 6465 Wayzata Boulevard, St. Louis Park, MN 55426. NAF, LLC's registered agent is Michael Kelly. NAF, LLC also does business under the name "National Arbitration Forum."

9. Dispute Management Services, LLC, d/b/a Forthright ("Forthright") is a privately held, for-profit Delaware limited liability company. Forthright's registered address and principal place of operations is the same as NAF, Inc.'s and NAF, LLC's: 6465 Wayzata Boulevard, St. Louis Park, MN 55426. Forthright's registered agent is the same as NAF, LLC's: Michael Kelly.

JURISDICTION

10. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a), 325F.67, and 325F.70 (2008).

11. This Court has personal jurisdiction over the National Arbitration Forum because the Forum does business in Minnesota, has agents and property in Minnesota, and has committed acts in Minnesota causing injury to consumers.

VENUE

12. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2008) because the National Arbitration Forum resides, and the cause of action arose, in part, in Hennepin County.

FACTUAL BACKGROUND

I. The National Arbitration Forum.

13. The National Arbitration Forum—headquartered in St. Louis Park, Minnesota—is comprised of three companies that effectively operate as one: defendants NAF, Inc., NAF, LLC, and Forthright.

14. The Forum is the nation's largest provider of consumer debt collection arbitrations. Most of the arbitrations conducted by the Forum involve claims by credit card companies, debt buyers, and other creditors against ordinary consumers.

15. Credit card and other companies often place language in the fine print of their customer agreements that requires consumers to arbitrate any future disputes—often in the Forum—thereby causing consumers to forfeit the right to have the dispute resolved by a judge or jury. When a company with a predispute mandatory arbitration clause in its customer agreement decides that the consumer owes a debt that cannot be collected through other means, it may initiate a consumer collection arbitration in the Forum, or it may sell the debt to a third party, who may initiate arbitration in the Forum. Regardless, these companies are often represented by outside debt collection law firms.

16. National credit card companies are some of the most prolific users of the National Arbitration Forum. Examples of credit card companies that have used the Forum to process consumer debt collection arbitrations under predispute mandatory arbitration clauses include MBNA/Bank of America, JP MorganChase, Citigroup, Discover Card, Deutsche Financial, and American Express, among others. Increasingly in recent years—in part as a result of the Forum's aggressive outreach to creditors—other industries have used the Forum's services to bring claims against ordinary consumers, including, for example, mortgage lenders, retailers who

lend money to consumers to buy their products, debt buyers, and cell phone companies. As set forth below, the Forum has actively encouraged credit card and other companies to place mandatory arbitration clauses in their customer agreements and has actively encouraged business clients to steer arbitration filings to the Forum.

17. The Forum is intimately involved in the arbitration process. Arbitrations conducted by the Forum are governed by a Code of Procedure (the "Code")—a Code drafted by the Forum. Under the Code, the Forum purports to act like a clerk of court and coordinates the arbitration process. The National Arbitration Forum dictates and controls the arbitration process. For example, the Forum handles important aspects of the arbitration process, including scheduling of hearings, selection of the arbitrator (unless the parties otherwise agree), and dismissal of claims or responses. The Forum charges fees to consumers to participate in arbitration. As described below, it markets to and assists companies in ways that would not be tolerated if done by a court of law.

18. The Forum claims that it has been appointed as the arbitrator in "hundreds of millions of contracts." The Forum resolves important claims that affect the lives of ordinary citizens. In 2006, it processed over 200,000 consumer collection arbitration claims. Its arbitration practices have been sharply criticized by consumer groups and consumers and have been the subject of numerous exposes and reports. One of the Forum's officers, Edward Anderson, claimed to the hedge fund managers who eventually acquired an interest in it that: "The FORUM is one of a kind; there is no competitor nor is there likely to be one....The barriers to entry border on being insurmountable...."

II. The National Arbitration Forum Promotes Itself as Independent, Neutral, and Not Affiliated with any Business that Uses Its Services.

19. In its marketing efforts and elsewhere, the National Arbitration Forum has deliberately created the widespread—but false—perception that it is not affiliated with or beholden to companies that use its services.

20. These claims are placed conspicuously on multiple websites associated with the National Arbitration Forum, including www.adrforum.com, www.forthrightsolutions.com, and www.arbitrationanswers.com. The Forum's false representations are also prominently displayed in other forms of advertisements, public statements, and elsewhere.

21. The following is a typical representation of independence and neutrality found on the National Arbitration Forum's website:

> Q: Is the FORUM affiliated with credit card companies or other businesses that use pre-dispute arbitration agreements?
>
> A: **No. The FORUM is an independent administrator of alternative dispute resolution services**.... The FORUM administers cases and ensures the cases proceed quickly and smoothly according [to] the rules of the arbitration or mediation agreement. Our dispute resolution processes are designed to provide both parties with an equal opportunity to prevail. **We are not beholden to any company or individual that utilizes our services**." (Emphasis added.)

22. Similar claims of the National Arbitration Forum's independence and neutrality abound on its website and elsewhere:

- **"Impartiality** and integrity. The FORUM is **independent and neutral**. It is **not affiliated** with any party." (Emphasis added.)
- "Our Statement of Principles illustrates how the FORUM, **as a neutral administrator of arbitration proceedings**, provides due process and remains neutral and fair." (Emphasis added.)
- "PRINCIPLE 4. INDEPENDENT ADMINISTRATION. **An arbitration should be administered by someone other than the arbitrator or the parties themselves**." (Emphasis added.)

- "The FORUM has **no contracts with any party** to any arbitration...." (Emphasis added.)

- "The FORUM...[has] no relationship with any party who uses our services."

- "Administrative Independence. Staff members of the National Arbitration Forum operate in a manner **analogous to court clerks and administrators**. They are **independent** of any party and have **no relationship of any type** with any arbitrating party...." (Emphasis added.)

- "**As one of the world's largest neutral administrators of arbitration services**, The Forum is setting a new standard for civil dispute resolution within the American justice system." (Emphasis added.)

23. In addition, the National Arbitration Forum claims that it is not affiliated or aligned with, owned by, and does not counsel any company that files an arbitration claim in the National Arbitration Forum:

- "**The FORUM is not affiliated with any party**. The FORUM is compensated on a case-by-case basis only for doing the work associated with administering mediations, arbitrations and other ADR proceedings." (Emphasis added.)

- "Who is the National Arbitration Forum? **The FORUM is not a party to an arbitration claim and is not affiliated with or owned by any party who files a claim with the FORUM**." (Emphasis added.)

- "As a **neutral** arbitration administrator, the Forum has no exclusive client relationships. **We do not contract with, represent or counsel our users, whether they are businesses or individuals**." (Emphasis added.)

- "**Far from being aligned with lenders and other business parties**, the NAF and its affiliated arbitrators provide **neutral** and unbiased dispute resolution services." (Emphasis added.) (Written comments submitted by NAF, LLC's managing director to the Federal Trade Commission dated August 13, 2007.)

24. Similarly, the National Arbitration Forum claims that it does not receive any money from any source, except for the fees paid for its arbitration services:

- "**The FORUM receives no funds from any source,** other than fees paid for dispute resolution services." (Emphasis added.)

- "Q: Why does the FORUM charge fees for its arbitration services? A: **The FORUM's revenue is derived solely from the fees we charge for our administrative services.** There are different fees for filing cases, commencing cases, arranging hearings, and processing requests and arbitration decisions. **We have no other source of revenue and we have no relationship with any party who uses our services.**" (Emphasis added.)

25. Furthermore, building on its claims of independence and neutrality, the National Arbitration Forum asserts that arbitration in the Forum is similar to or better than court:

- "One of the FORUM's dispute resolution services, arbitration, **is procedurally very similar to court**." (Emphasis added.)

- "The core due process procedures that exist in FORUM arbitrations are identical or substantially similar to the due process procedures available in judicial and administrative law dispute resolution systems.... These arbitral procedures provide **truly excellent due process protections, and meet or exceed the rights parties would have in any court or before an administrative law judge**." (Emphasis added.)

- "Alternative dispute resolution (ADR) is a **more efficient, predictable and amicable way to resolve conflicts and achieve legal decisions without the expense and inconvenience of going to court**." (Emphasis added.)

- **"The FORUM resolves disputes in a manner that is faster, simpler, and less expensive** than traditional courtroom litigation." (Emphasis added.)

III. The National Arbitration Forum Is Affiliated with One of the Country's Major Debt Collection Enterprises.

26. There are a number of companies described in this Complaint that are not parties to the lawsuit. Their affiliation with the Forum, however—which began with discussions in 2006—plays an integral role in the violations alleged herein. These companies—Accretive, Agora, and Axiant—were all organized by an investment manager named J. Michael Cline of New York City.

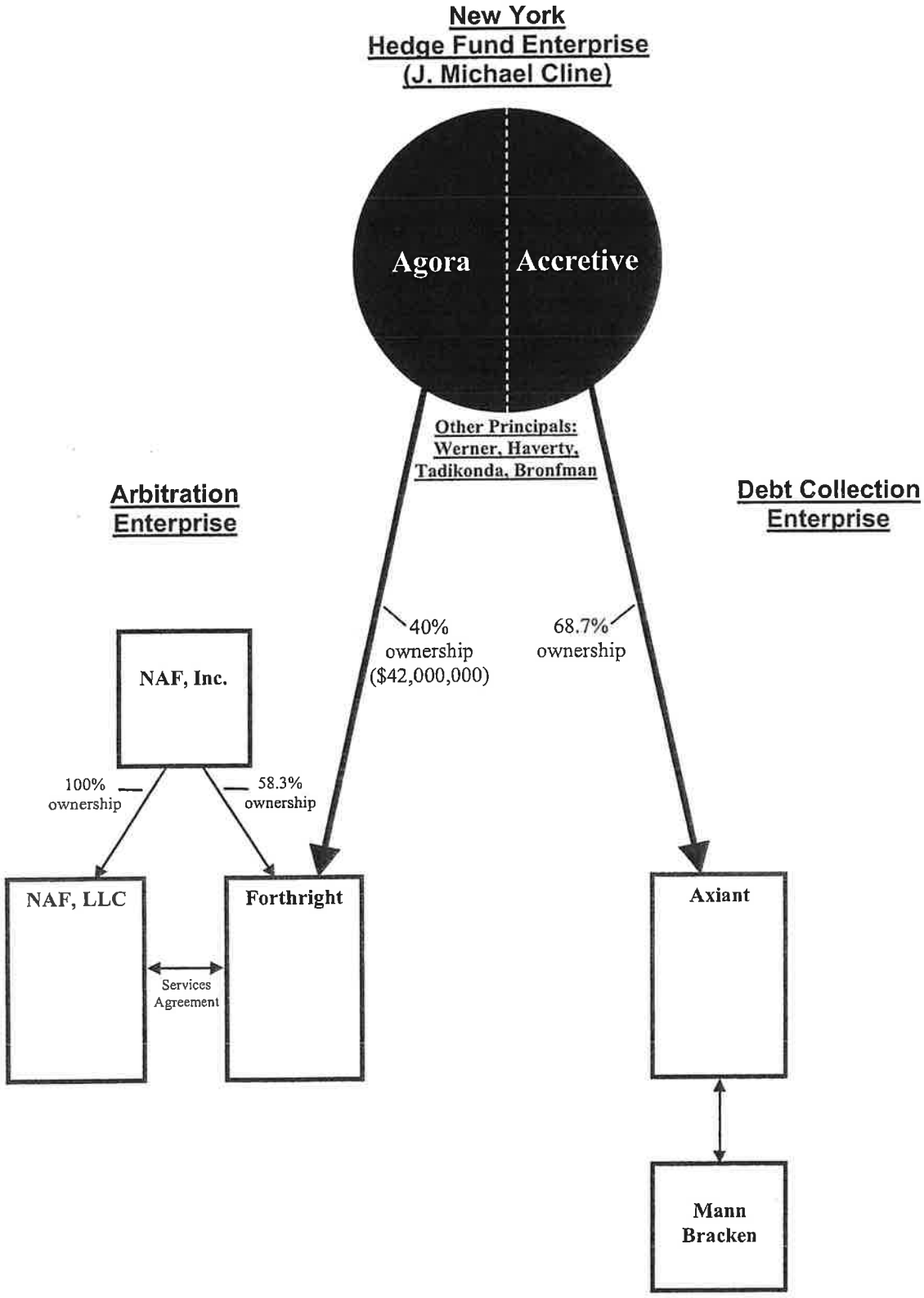
27. *Accretive* is a family of private equity funds based in New York City that operates under the control of Cline and his associates. A number of the Accretive entities were originally organized in 1999.

28. *Agora* is a family of private equity funds based in New York City that was created by Cline and his associates through the Accretive network. The Agora entities were formed in 2007 to acquire significant financial interests in the National Arbitration Forum.

29. *Axiant* is a debt collection agency in which Accretive has majority ownership and which was created by Accretive to acquire the assets of three large national debt collection law firms (Mann Bracken (based in Atlanta, Georgia), Wolpoff & Abramson (based in the District of Columbia), and Eskanos & Adler (based in California)), which eventually all merged into Mann Bracken.

30. Accretive, Agora, Axiant, the Forum, and Mann Bracken form a complex web of companies that compose some of the largest debt collectors and arbitrators of consumer credit card debt in the country. In 2006, the National Arbitration Forum arbitrated over 200,000 claims involving credit card and other debt issued by national banks and large corporations; in almost 60 percent of those cases, the banks, or the funds that purchased the consumer debt, were represented by Mann Bracken or Wolpoff & Abramson.

31. One document setting forth the business plan for Accretive's investment in the Forum describes the goal as placing the Forum "at the center of a broad arbitration ecosystem." These ties, which are further described below, are depicted in the following chart:


New York
Hedge Fund Enterprise
(J. Michael Cline)
Agora
Accretive
Other Principals:
Werner, Haverty,
Tadikonda, Bronfman
Arbitration
Enterprise
Debt Collection
Enterprise
40%
ownership
($42,000,000)
68.7%
ownership
NAF, Inc.
100%
ownership
58.3%
ownership
NAF, LLC
Forthright
Services
Agreement
Axiant
Mann
Bracken

A. The New York Hedge Fund Group Plans for the National Arbitration Forum to "Si[t] at the Center of a Broad Arbitration Ecosystem."

32. Beginning in 2006 and through 2007, there were a series of meetings involving Accretive (the family of New York private equity funds under control of Cline and his associates), the National Arbitration Forum, and three large national law firms: Mann Bracken, Wolpoff & Abramson, and Eskanos & Adler. As a result of these meetings, Accretive formed several equity funds under the name Agora, which in turn invested $42 million in the National Arbitration Forum and obtained governance rights in it. The three large national debt collection law firms then merged into Mann Bracken, which in turn sold its assets and collections operations to Axiant, a company formed and owned by Accretive. These transactions are further described below.

33. In June 2006, principals of Accretive, LLC met in Minnesota with Edward Anderson and Michael Kelly, officers of the National Arbitration Forum. Accretive told the Forum that it was "excited by the range of expansion opportunities" presented by a potential financial relationship between the fund and the Forum. In particular, the Accretive principals told the Forum that a relationship between Accretive and the Forum "could catalyze [a] major transformation in many of the biggest legal sub-markets." Among other things, Accretive promised the Forum that it could provide it with "[i]ntroduction to legal collections individuals" and stated that "we believe Accretive would be a great partner to help NAF become a billion-dollar company." An e-mail following up on the meeting was sent to the Forum from an Accretive e-mail address.

34. Thereafter, on August 28, 2006, J. Michael Cline—the managing member of Accretive, LLC—presented Forum executive Edward Anderson with a formal outline of a proposed "equity transaction" between Accretive, LLC and the Forum. The proposal—which is

on Accretive letterhead—states that, "We [Accretive] have spent considerable time researching the legal collections and arbitration markets and are very impressed by the NAF and the unique position you have created in the industry....We believe Accretive would make an ideal partner for the NAF team and that we can help significantly accelerate the creation of value for NAF." Under the proposal, Cline's company—Accretive, LLC—would acquire a 40 percent ownership interest in the Forum and the right to appoint two members to its board of directors. Accretive promised to play an "active role in landing new customers" and to "leverage [the] Accretive network for introductions" and set forth a plan in which:

- "NAF becomes the primary venue for resolution of high-volume, low-ticket disputes"
- "In established markets, such as credit card, NAF exploits clause placements and becomes the preferred collections tactic where speed and cost are critical considerations. Arbitration should capture at least 50% of the volume currently placed in litigation"
- "In new industries, such as healthcare, NAF Procedures are used early and consistently as the standard method for resolving payment disputes. By playing a prominent role, NAF fundamentally shapes the collections players and tactics that emerge in these industries"
- "NAF sits at the center of a broad arbitration ecosystem, giving rise to a range of specialist firms that serve as sources of cases or as post-award processors"
- "Arbitration expands to become a comprehensive, alternative legal system."

(Excerpts from the August 2006 proposal are attached as Exhibit 1) (*See* Complaint Exhibits at 001-003).

35. Accretive also promised to "launch" the Forum into new lines of business, such as arbitration of health care disputes between patients and hospitals, through Accretive Health, which provides collection services to hospitals.

B. The National Arbitration Forum Was Divided into Three Entities that Effectively Operate as One in Order to Camouflage the Significance of the Hedge Fund Ownership.

36. The Forum—aided by principals of Accretive—thereafter went to great lengths to concoct an elaborate corporate structure that conceals—but does not legitimize—the affiliations that undermine its claims of independence and neutrality.

37. For example, for most of its existence, defendant NAF, Inc. operated as a stand-alone company. As part of the transaction between the Forum and Accretive, both companies created new companies that would conceal the affiliation between them. The Forum formed Forthright, and Accretive formed Agora. As a result, at no time is Accretive publicly disclosed as an owner of the Forum.

38. Under the scheme, defendant Forthright purports to be the arbitration processing/marketing company and another defendant company, NAF, LLC, purports to retain the arbitrators. The third defendant (NAF, Inc.) has an ownership interest in the other two defendants.

39. In fact, the three defendants—NAF, Inc., NAF, LLC, and Forthright—effectively operate as one enterprise. As set forth below, NAF, Inc. and Forthright directly profit from the arbitrations conducted by the enterprise. The companies are closely interconnected, having, among other things, a common venture, common ownership, the same office space, common executive leadership, and the same registered agent. NAF, LLC and Forthright are also linked by an extensive Services Agreement (one which was required by the Accretive principals).

40. **Common office space**. As noted above, the three defendant corporations share office space at 6465 Wayzata Boulevard, St. Louis Park, MN 55426.

41. **Common ownership, officers, and directors**. NAF, Inc. owns 100 percent of NAF, LLC and 58.3 percent of Forthright. The three companies have key principals in common. For example:

- Michael Kelly is the CEO of NAF, Inc., the CEO of Forthright, and the registered agent of both NAF, LLC and Forthright.
- Edward Anderson is Chairman, CFO, a director and a shareholder of NAF, Inc. and Chairman, Executive Vice President, a director and a board member of Forthright.
- Roger Haydock is an officer, director, and shareholder of NAF, Inc. and the sole officer and a director of NAF, LLC.
- Edwin Sisam is a director and shareholder of NAF, Inc. and a director of NAF, LLC.
- Keith Kim is a director and shareholder of NAF, Inc. and a director of Forthright.
- William Franke is a director and shareholder of NAF, Inc. and a director of Forthright.

42. **Services Agreement**. Forthright and NAF, LLC entered into a Services Agreement dated June 27, 2007. A Restated Services Agreement, which amended the original, is dated July 1, 2007. The hedge fund managers helped to write the Services Agreement. Under the Restated Services Agreement, Forthright controls most aspects of the arbitration administration, including:

- *Finance and accounting.* Forthright performs all necessary bookkeeping and accounting services for NAF, LLC, including payroll, purchasing, financial reporting, billing, and collections.
- *Operational assistance and support.* Forthright provides the personnel, facilities, and equipment to perform all management and administrative functions of NAF, LLC.
- *Information technology.* Forthright provides and maintains all necessary IT systems necessary to support arbitrations.

- *Management consulting.* Forthright provides senior executive management services required by NAF, LLC, including strategic planning for business growth, business development, and acquisitions.

- *Marketing consulting.* Forthright provides all marketing resources, materials, and services for NAF, LLC.

- *Human resources administration.* Forthright provides all recruiting, interviewing, hiring, employment administration, labor contract negotiations and administration, and fringe benefits administration.

- *Legal and tax consulting.* Forthright provides all legal and tax consulting and coordinates all legal services.

- *Intellectual property.* Forthright provides all software, applications, databases, web products, trade secrets, trademarks, know how, and other proprietary information necessary for arbitrations.

43. The Services Agreement is for an initial period of five years and is automatically extended for subsequent five year periods (unless cancelled pursuant to its terms). NAF, LLC pays Forthright a substantial fee for its services. The fee is broken down into two parts: a monthly seven-figure fee and a "success fee" based on a formula related to the amount of revenue received by NAF, LLC. Thus, Forthright profits directly from the arbitrations conducted by the Forum (and so do the Accretive principals, as described below). One of the Accretive principals described the payments from NAF, LLC to Forthright under the Services Agreement this way: "95% of revenue [goes to Forthright] after direct-arbitrator (mediator) costs."

44. Many of those now working for Forthright have the same duties as when they worked for NAF, Inc. This is by design. Forthright states on its website that it "handles all arbitrations and mediation transaction processing and claims administration" for the Forum. The Forum states on its website that Forthright "serves as the exclusive provider of all necessary services to optimize the process and the administration of National Arbitration Forum arbitration and mediation claims." The Forum's internal announcement regarding the "restructuring" stated

that "current work will remain unchanged." For example, the job duties of the former in-house legal counsel to the National Arbitration Forum, who became the in-house legal counsel to Forthright, remained the same: "[Y]ou may have noticed that our company name and email address has changed as Forthright is now the authorized administrator for National Arbitration Forum. My job duties and other contact information remain the same." The Forum delayed issuing a news release about the creation of Forthright for about a year—and only did so after a reporter began to ask questions about the identity of the Forum's investors.

C. Agora/Accretive Buys Into Forthright.

45. As set forth below, Accretive, LLC—in addition to having Agora purchase a significant stake in the Forum—also created and is the majority owner of a major debt collection enterprise called Axiant, LLC—which it purchased along with the partners of the Mann Bracken, LLP law firm, one of the country's largest debt collection law firms.

46. In 2006, Forum executives recognized the problems that would arise if Accretive's investment in the Forum—and its ties to the Mann Bracken law firm—became public. Indeed, Forum executives emphasized that if there was the risk of public knowledge of the affiliation between the Forum and Accretive/Mann Bracken, the transaction should be unwound. As noted by Forum executive Michael Kelly on November 20, 2006:

> I cannot overstate our concern over the Mann Bracken relationship. Although I do not have any solutions off the top of my head, we should certainly plan for unwinding any deal in the event shared ownership becomes an acute issue.

(Attached as Exhibit 2 is a copy of Kelly's November 20, 2006 e-mail) (*See* Compl. Exs. at 004).

47. Kelly also proposed the "formation of a new fund [Agora] as the investment vehicle (no public information connecting Accretive with the fund that ultimately acquires and holds the minority interest in the Forum)." (*See* Exhibit 2 at 004.)

48. In order to conceal the conflicts inherent with the Accretive/Forum transaction, J. Michael Cline formed several new entities called "Agora."

49. As set forth below, through a series of agreements, Agora purchased a 40 percent interest in defendant Forthright. As a result of this ownership and the Services Agreement between NAF, LLC and Forthright, Agora (and the Accretive principals) profits directly from the arbitrations conducted by the Forum.

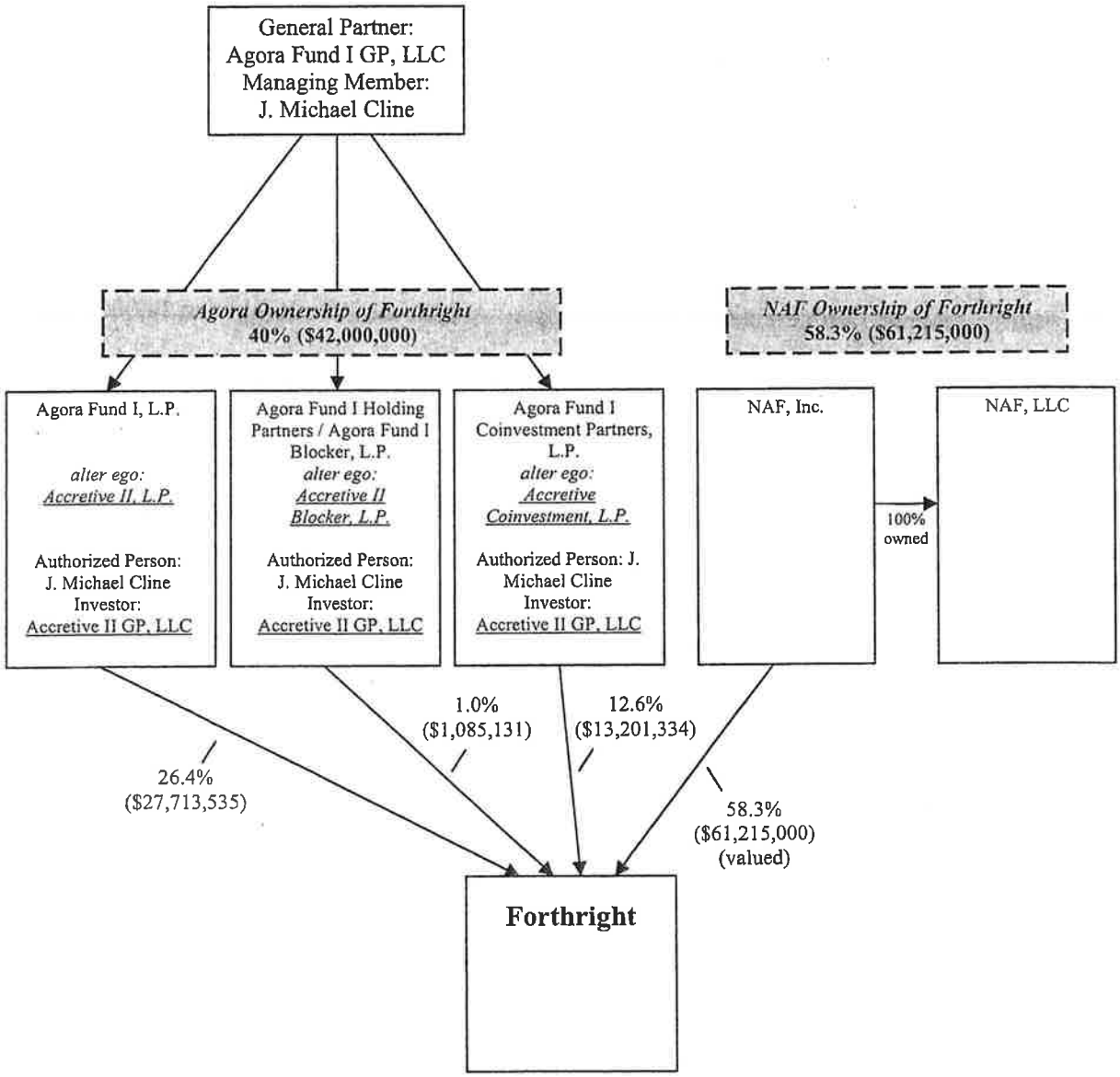
50. The first written agreement executed by the parties was a letter of intent signed on January 15, 2007 by Cline through which the yet-to-be-created "Agora Funds" was to buy a 40 percent ownership interest in the yet-to-be-created defendant Forthright. (Forthright was not created until June 2007.) A few weeks after the letter of intent was signed, Cline formed several Delaware companies bearing the Agora name. Beginning with the initial letter of intent, Agora began to dictate important terms of the Forum's operations. For example, Agora required at paragraph B(5) of the letter of intent that defendants NAF, LLC and Forthright enter into a services agreement "upon terms satisfactory to the Company [NAF, Inc.], Newco [Forthright] and the Investor [Agora]." As set forth above, NAF, LLC and Forthright entered into the Services Agreement on June 27, 2007. Through the Services Agreement, Forthright—and hence, Agora as an owner—profits from the arbitrations conducted by the Forum.

51. As part of the due diligence for the transaction, Defendants provided Agora with detailed information about virtually every aspect of its arbitration business, including but not limited to information about mandatory arbitration clause placement trends, claim volume and

revenue trends, customer calls, revenue, finances, personnel, judgment trends, arbitrator credentials, court rulings, and the like. Thus, even during the run-up to the transaction, the Agora/Accretive principals became privy to intimate and detailed information about virtually all the "ins and outs" of the Forum's arbitration services.

52. The transaction was consummated in June 2007. On June 27, 2007, three Agora entities entered into a Unit Purchase Agreement with NAF, Inc. and Forthright through which the Agora entities acquired 40 percent—or 400,000 Class A units—of Forthright for $42,000,000. These purchases were made by Agora Fund I, LP (263,938 Class A units at $27,713,535); Agora Fund I Coinvestment Partners, LP (125,727 Class A units at $13,201,334); and Agora Fund I Holding Partners (10,335 Class A units at $1,085,131). The following chart depicting Agora's ownership in Forthright:

Details of Forthright's Ownership



53. The Unit Purchase Agreement is signed by NAF, Inc. through Edward Anderson as Chairman and CFO and by Forthright through Michael Kelly as CEO. As noted above, Kelly and Anderson have overlapping roles with both organizations. Kelly is also CEO of NAF, Inc., which owns 100 percent of NAF, LLC, and the registered agent of NAF, LLC. Anderson is Chairman and an officer and director of Forthright.

54. Cline—the head of Accretive—signed the Unit Purchase Agreement as managing member of Agora Fund I GP, LLC—the general partner of all three Agora entities: Agora Fund I, LP, Agora Fund I Coinvestment Partners, LP, Agora Fund I Holding Partners. The three Agora entities, along with the general partner, Agora Fund I GP, LLC, were all formed by Cline in the State of Delaware on February 2, 2007—two weeks after the initial letter of intent was signed. The address for Agora Fund I GP, LLC is listed as 55 East 59th Street, 22nd Floor, New York, NY 10022, which was the address for Accretive.

55. On the same day they entered into the Unit Purchase Agreement, Agora and NAF, Inc./Forthright entered into an Investors Agreement.

56. The Investors Agreement identifies the investors in each of the Agora funds. (A redacted copy of this schedule is attached as Exhibit 3; it is redacted to delete the names of third-party investors who are not currently identified as having links to the debt collection enterprise described herein.) The chart of investors lists behind each Agora entity a functional Accretive *alter ego*:

- Agora Fund I, LP = Accretive II, LP
- Agora Fund I Coinvestment Partners, LP = Accretive II Coinvestment, LP
- Agora Fund I Blocker LP = Accretive II Blocker, LP

57. Like the Agora funds, each of the Accretive entities was formed in the State of Delaware by Cline. Each listed an address at 55 East 59th Street, 22nd floor, in New York City—the address of Agora. Each has the same general partner: Accretive II GP, LLC, a Delaware LLC, also formed by Cline and of which Cline is the managing member.

58. As shown in Exhibit 3, Accretive II GP, LLC—the general partner of each Accretive *alter ego*—invests in each Agora fund. Other investors in Agora Fund I Coinvestment

Partners, LP include JMC Holdings, LP and Edgar Bronfman, Jr. Bronfman is a general partner of Accretive, LLC. The "JMC" in JMC Holdings, LP stands for "J. Michael Cline."

59. Agora and Accretive share common office space and common principals, partners, and/or members, including but not limited to Cline, Werner, Jay Haverty, and Madhu Tadikonda, all of whom are or were affiliated with Accretive, LLC, the Delaware limited liability company formed by Cline. Cline is Accretive LLC's managing partner, Werner is a general partner, Tadikonda is or was a principal, and Haverty is or was an associate. Tellingly—and consistent with reality—e-mails provided by the National Arbitration Forum sometimes conflate Agora and Accretive, referring to the Agora principals, partners, and/or members as the "Accretive folks." Similarly, e-mails exchanged between Agora and the Forum about Forum business are sometimes sent to or from an Accretive e-mail address.

D. The Accretive Principals Participate in the Operations of Forthright.

60. Prior to the consummation of the transaction with the Forum, the Accretive principals made clear to the Forum that "[o]ur investors have entrusted us with their funds on an assumption that we maintain a high level of governance oversight over our portfolio companies."

61. To that end, among other documents, NAF, Inc. and the three Agora entities (through Cline) executed an Amended and Restated Limited Liability Company Agreement of Forthright (the "LLC Agreement") on June 27, 2007. Among other things, the LLC Agreement at paragraph 5.5 gives the Class A Units—(i.e., the ones held by Agora Funds)—the right to appoint two members of Forthright's five-person governing board.

62. Also on June 27, 2007, Agora exercised this right, appointing Cline and his associate, Werner, to the Forthright board. Cline and Werner served on Forthright's board from

June 27, 2007 to April 22, 2008. Two other Agora/Accretive principals—Tadikonda and Haverty—joined Cline and Werner in Forthright board meetings.

63. The Agora/Accretive principals have been substantially involved in Forthright's operations. At the January 15, 2008 board meeting, for example, Tadikonda agreed to provide Forthright CEO Kelly with resumes for potential chief financial and chief operating officers. At the same meeting, it was agreed that Werner would assist Kelly in "examin[ing] and review[ing] the current sales process, and review[ing] the strategy the company is using with each account."

64. Similarly, at the March 4, 2008 Forthright board meeting—again attended by Messrs. Cline, Werner, Tadikonda, and Haverty—the participants discussed "methods to increase the number of large batch claims being processed by arbitrators, and changes in the process that would provide filers access to working capital." The participants also discussed "various opportunities to go after debt (issuer, debt buyer, and filer all present opportunities to steer claims into arbitration)[.]"

65. Cline and Werner departed from the board in April 2008, around the time that a reporter began to ask questions about the affiliations between Defendants, Accretive, and Axiant. The departure was one of form rather than substance. As set forth in this Complaint, Agora/Accretive is far from a passive investor in Forthright; to the contrary, it has been active in its operations.

66. Cline, Werner, and other Agora/Accretive principals continued to be involved in key activities of the Forum's daily operations after Cline and Werner departed from the governing board. For example, in the spring of 2009 the Agora/Accretive principals developed a "Forthright—Accretive Priorities Focus." Among other things, Accretive was to help the Forum find "new growth opportunities," such as "expansion of arbitration services" into the service and

confirmation of arbitration filings and potential "small claims court administration for debt buyers." (A copy of the document is attached as Exhibit 4) (*See* Compl. Exs. at 006).

67. Also this year, the Forum has informed Cline and Werner of personnel decisions, Accretive principals have helped the Forum to identify and interview a business development officer, and the Agora/Accretive principals have helped the Forum craft bids for new arbitration business.

68. In 2008, after Cline and Werner left the board, the Agora/Accretive principals also helped craft the Forum's responses to media inquiries about its arbitration practices. This year, they helped the Forum devise "talking points" and a plan to lobby members of Congress on how to kill or weaken the proposed federal Arbitration Fairness Act, which would restrict the placement of mandatory arbitration clauses in "take-it-or-leave-it" consumer agreements—clauses from which the Forum and the Agora/Accretive principals derive substantial revenue.

69. In addition, Agora/Accretive has requested Forthright to submit to it detailed periodic reports about key aspects of its operations. Accretive has requested similar reports to be submitted by Mann Bracken about Axiant. As shown below, this relationship with Agora/Accretive ties the Forum to the debt collection industry. As a result, the Forum is not the independent and neutral arbitration company that it claims to be.

E. The Hedge Fund Group Run by Cline, Werner, and Associates, Along with the Partners of the Mann Bracken Law Firm, Own Axiant—One of the Country's Largest Debt Collection Enterprises.

70. As set forth below, the Accretive funds—run by Cline, Werner, *et al.*—own the majority interest in Axiant, LLC, one of the country's major debt collection enterprises. As further set forth below, principals of the Mann Bracken law firm own the remainder of Axiant, a Delaware LLC with headquarters in Georgia.

71. Accretive, LLC states on its website that "Axiant's customers include many of the nation's largest financial institutions and consumer debt purchasers." One consultant has described Accretive's acquisition of Axiant this way:

> Legal restrictions have typically prohibited the buying and selling of law firms between parties other than attorneys. These barriers have limited M&A activity in the collections law firm segment until very recently.
>
> In 2007, new ground was broken. A private equity fund in New York, Accretive LLC, effectively acquired the non-legal capabilities of three collection law firms: Mann Bracken, Atlanta, Georgia, Wolpoff & Abramson, Rockville, Maryland, and Eskanos & Adler, PC, Concord, California.
>
> Today, this group of companies, now called "Axiant", promises to become the largest and perhaps most profitable in the collection law firm industry. It boasts of blue chip customers, excellent margins, and high revenue growth rates, in addition to a wide national attorney network.

72. Mann Bracken described its relationship with Axiant in papers filed with state regulators as follows:

> In November 2006, [Mann Bracken] contributed the majority of its assets and liabilities related to its telephone collections services operations, including non-attorney personnel, to Axiant, LLC, formerly known as MB Solutions, LLC, which was a newly formed and wholly owned subsidiary of [Mann Bracken].

73. The law firm that represented Mann Bracken in connection with the transaction with Axiant describes the relationship between Axiant, Accretive, LLC and Mann Bracken this way:

> HortenCC represented Mann Bracken, LLC, one of the country's largest collections law firms, in the formation of Axiant, LLC, a joint venture debt collection business owned by the Mann Bracken partners and Accretive, LLC, a New York hedge fund. The transaction required the development of a complex legal structure to comply with the regulatory requirements to which law firms and collection agencies are subject. The transaction was a first in the legal industry in that it allowed the Mann Bracken partners to monetize their ownership interests in the law firm.

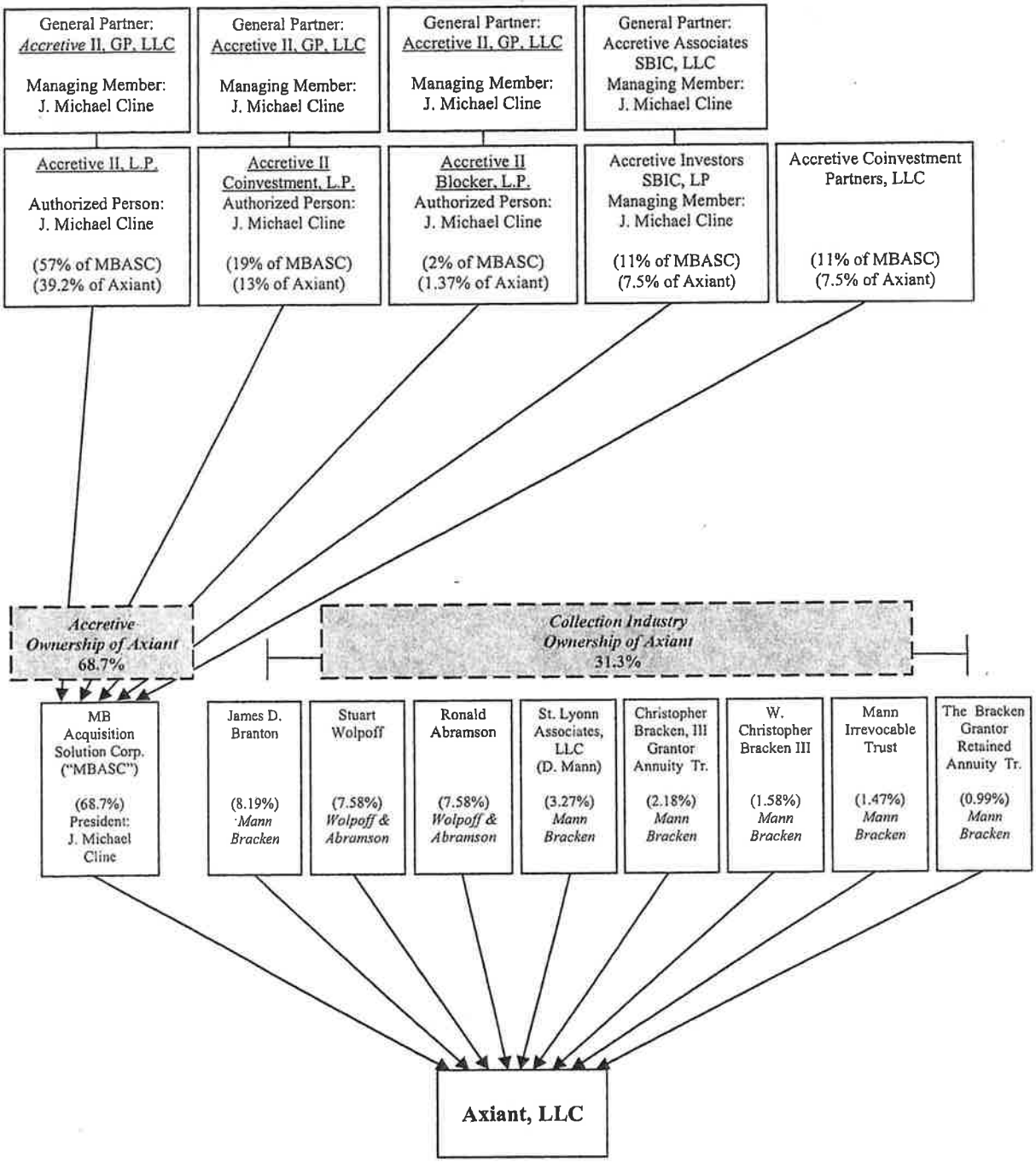
74. In filings submitted to state regulators, Axiant has stated that the Accretive group owns 68.7 percent of Axiant. The Accretive group invests in Axiant by owning and investing in a company called MB Acquisition Solution Corporation, of which Cline is President and Accretive, LLC's general counsel is Secretary. (Attached as Exhibit 5 (*See* Compl. Exs. at 007) is a chart filed by Axiant with state regulators outlining the Axiant ownership structure. It is redacted to delete Employer Identification and Social Security numbers.) Exhibit 5 lists major owners of MB Acquisition Solution Corporation—and hence, Axiant—as Accretive II, LP (the *alter ego* for Agora Fund I, LP) with 39.2 percent of Axiant; Accretive II Coinvestment, LP (the *alter ego* for Agora Fund I Coinvestment Partners, LP) with 13 percent of Axiant; and Accretive II Blocker, LP (the *alter ego* for Agora Fund I Blocker LP) with 1.37 percent of Axiant.

75. Other Accretive entities own the remainder of MB Acquisition Solution Corporation. For example, as of October, 2008, Accretive Investors SBIC, LP reported owning 7.5% of Axiant. (*See* Exhibit 5 at 007.) Accretive Investors SBIC, LP is a Small Business Investment Company—a privately owned investment fund authorized by the federal Small Business Administration ("SBA") to issue government financing to small businesses. In fiscal year 2004 Accretive Investors SBIC, LP obtained approval from the SBA to issue $100,500,000.00 in financing through the SBA's Small Business Investment Corporation program. In February 2009, Accretive Investors SBIC, LP sought approval from the SBA to provide additional "equity financing" to Axiant, LLC for purposes of operating capital and debt repurchase. The SBA's approval for the financing was required under federal conflict of interest regulations because Accretive is affiliated with Axiant. Through the investment, the federal government effectively distributed money to help fund the debt collection enterprise.

76. Axiant has told regulators that a variety of individuals and entities affiliated with the Mann Bracken law firm—one of the country's largest debt collection law firms and a filer of arbitration claims in the Forum—own the remaining 31.3 percent of the company. As shown in the chart below and Exhibit 5, numerous individuals connected to Mann Bracken and its predecessor law firms have ownership stakes in Axiant, including: James D. Branton (8.19%); Stuart Wolpoff (7.58%); Ronald Abramson (7.58%); Christopher Bracken, III Grantor Annuity Trust (2.18%); and W. Christopher Bracken III (1.58%). Each of these individuals are principals, partners, and/or members of Mann Bracken or its predecessors.

77. The following chart depicts this ownership structure:

Details of Axiant's Ownership



78. Members of Accretive's inner circle also sit on Axiant's board of directors. For example, Jeff Rodek, a senior advisor with Accretive, LLC, states on his resume that he is a

member of Axiant's board of directors. In addition, an unrelated company on whose board of directors Cline served states that Cline is or has been a director of Axiant.

79. Thus, the same Agora/Accretive principals who are involved with the Forum's arbitration business are simultaneously involved in Axiant's debt collection business.

F. Axiant and the Mann Bracken Law Firm Work Together to Collect Debt from Consumers and File Arbitration Claims in the Forum.

80. As noted above, Mann Bracken, LLP, a Delaware limited liability partnership with headquarters now in Maryland, was formed through a merger of three of the nation's top five collection law firms: Mann Bracken, LLC, Eskanos & Adler, PC, and Wolpoff & Abramson, LLP. In 2006 there were just over 214,000 consumer debt collection arbitration claims filed in the Forum; Mann Bracken and Wolpoff & Abramson filed over 125,000, or 58 percent, of those claims.

81. Mann Bracken has been at the forefront of promoting mandatory binding arbitration as a means of collecting debt from consumers. It claims that: "In 2001, we pioneered the use of arbitration in collection matters...." It has also stated that: "Mann Bracken is a recognized leader in national arbitration collections. The use of this alternative dispute resolution can be an effective and efficient means for a creditor or debt buyer to resolve matters whereby before the only alternative was legal."

82. Mann Bracken and Axiant work in tandem to fulfill a common purpose and joint mission. Axiant's website states that it offers "capabilities ranging from call center collections to national arbitration...through our strategic relationship with Mann Bracken, LLP...." It further states that its "strategic relationship with market-leading law firm, Mann Bracken LLP, enables Axiant to facilitate collections and recovery services to top issuers of an investors in debt products." It states that its clients are "market leading issuers of – and investors in – debt

products and portfolios" and that "Mann Bracken LLP and Axiant work in concert to serve our common clients." Under a section of its website itemizing its services, Axiant states that: "Axiant, in cooperation with Mann Bracken, LLP, a nationwide provider of legal collections and creditor's rights services" provides "national arbitration services through Mann Bracken, LLP."

83. Mann Bracken's website is substantially similar to Axiant's. On its website, Mann Bracken states that it has a "strategic relationship" with Axiant to collect debt from consumers and that Mann Bracken is "exclusively dedicated to providing services in concert with Axiant, LLC." Mann Bracken further indicates on its website that it is "[p]owered by Axiant" and is "able to tap into 'onlyAxiant' capabilities...." Further, Mann Bracken states that "Mann Bracken, LLP, in cooperating with its servicing partner, Axiant LLC, provides a broad range of financial services, legal collections and recovery management solutions for its clients," including "[n]ational arbitration filing and management services."

84. Mann Bracken has agreements with Axiant in which Mann Bracken receives management and professional services from Axiant and in turn provides "arbitration services" to Axiant. Mann Bracken described its agreements with Axiant in papers filed with state regulators:

> Subsequent to the contribution of assets and liabilities [to Axiant], [Mann Bracken] sold a majority and controlling interest in Axiant, LLC to outside investors. As such, to continue operations [Mann Bracken] has entered into an administrative services agreement whereby [Mann Bracken] receives certain management and professional services and leases office space and equipment from Axiant, LLC. Additionally, [Mann Bracken] has entered into a legal services retainer agreement with Axiant, LLC, whereby [Mann Bracken] provides arbitration and collection litigation services to Axiant, LLC.

85. Axiant and Mann Bracken are connected in numerous other ways. For instance, Mann Bracken and Axiant post joint job openings. In current job postings, Axiant/Mann Bracken describe Axiant as "one of the nation's premier debt collection and recovery

management organizations" and that that its capabilities range "from call center collections to national arbitration."

G. The National Arbitration Forum Hides Its Financial Ties to the Debt Collection Industry.

86. Concerned about exposure of its financial ties to the Accretive, the National Arbitration Forum conceals the relationship—a relationship that is at odds with the Forum's representations of independence, neutrality, similarity to a court, and lack of ties to parties that appear before it.

87. The Forum conceals these ties through the elaborate corporate structures described above, through its affirmative representations, and through its material omissions. As noted above, an e-mail from Forum executive Michael Kelly in November, 2006 emphasized that there should be "no public information" connecting Accretive with Agora and, hence, the Forum. Similarly, in 2008, when these ties came close to being uncovered by a reporter, the Forum discussed how to spin the press. The Director of Marketing for Forthright prepared a "key messages" document containing the following misleading talking points:

> Is there any relationship between Accretive and Forthright (between Accretive and the National Arbitration Forum)?
>
> Roger [Haydock]:
> This question is more appropriately directed to Mike Kelly, CEO of Forthright.
>
> Mike [Kelly]:
> No. (Follow up question - is there any relationship between Michael Cline - or insert other name that could be associated with Accretive and us in some way - and Forthright?) Questions about Accretive should be directed to the representatives from Accretive. (I'm not thrilled with this approach - but we can discuss.)

88. The National Arbitration Forum and Agora/Accretive consulted one another on how to respond to a question from a reporter about whether Accretive has an investment stake in

Forthright. Initially, the Director of Marketing for Forthright suggested that they respond by saying that Accretive had no stake in Forthright: "Since he asks if Accretive, LLC has an investment stake in Forthright Solutions[,] I believe our answer would be that Accretive, LLC does not." Ultimately the National Arbitration Forum gave the reporter an incomplete and misleading answer, layered in lawyer-speak:

> Following its spin-out from the FORUM, interested investors acquired a non-controlling, passive, minority position in Forthright. These several investors are primarily high net-worth individuals and endowments of major academic institutions. None of these minority investors has any control over the operations of the company. Confidentiality provisions prevent us from disclosing further information about them.

89. Agora/Accretive's investment in Forthright has never been publicly disclosed. By not disclosing these ties, Defendants have engaged in material omissions.

90. Similarly, in 2008 the Forum worked with the Chamber of Commerce and others on "independent reports" criticizing a report by Public Citizen that questioned the integrity of the Forum's arbitration practices. The Forum described the reports as "an independent effort" even though the Forum was involved in that effort:

- "Our role will be very background and not at all featured. This is a good thing as it will be best if no administrators are associated with … [the report] and if the Chamber (and the Arbitration Coalition of industry supporters) are front and center on this."

- "[W]e need to be sure (although I also want to make sure [Forum executives] know[] how much work you all put into this and that it wouldn't be possible without you) that we are clear that this was an independent effort."

IV. The National Arbitration Forum Steers Corporations to Use the Forum's Services and Provides Assistance to Them—Even Though It Represents to Consumers and the Public that It is Neutral and Independent.

91. Despite representing to the public that it is independent and neutral and does not "contract with, represent or counsel our users," the National Arbitration Forum works alongside

creditors—and against the interests of consumers—to convince the creditors to include mandatory predispute arbitration clauses in their customer agreements and then file claims against consumers in the Forum. The Forum aggressively promotes its arbitration services to corporations as a collections tool, but conceals this from consumers. In some cases, the Forum assists businesses in drafting mandatory arbitration clauses, helps them in making arbitration claims, counsels them on legal trends affecting arbitration, and refers them to debt collection law firms, including Mann Bracken. With an already-dominant position in the consumer credit card arbitration market, the Forum has discussed with Accretive how to "go after" new lines of business—and pays commissions to executives who help to expand its arbitration services into new sectors of the economy, such as health care or auto financing.

A. The National Arbitration Forum Actively Solicits Companies to Steer Arbitration Business To It.

92. The National Arbitration Forum earns revenue when it convinces companies to place mandatory predispute arbitration agreements in their customer agreements and then to appoint the Forum to arbitrate any future disputes. The Forum actively tries to persuade corporations to include provisions in their consumer agreements that require binding arbitration of disputes in the National Arbitration Forum, thereby stripping consumers of their right to have a court resolve any disputes. The Forum employs a Vice President of Clause Placement and clause placement executives, who are partially compensated on a commission basis for convincing companies to place clauses in their customer agreements requiring arbitration of any disputes in the Forum. The Forum also employs a Vice President of Filer Business Development and business development executives, who similarly are partially compensated on a commission basis for convincing clients to file arbitration claims in the Forum. Bonuses are also paid for getting companies in new industries like health care and auto financing to file claims in the

Forum. This is part of the Forum's business plan of expanding its arbitration dominance beyond the credit card sector to other forms of consumer debt.

93. Solicitations by the Forum take many forms, including e-mail messages, PowerPoint presentations, and in-person meetings.

94. The National Arbitration Forum's solicitations to corporations often characterize the Forum's arbitration services as a collections tool:

- "[M]any credit card issuers are using arbitration as a collection tool for both pre-charge off and post-charge off debt." (E-mail to bank.)
- "The Arbitration Alternative: Using FORUM Arbitration in Collections." (PowerPoint presentation to bank.)
- "How is arbitration currently used as a part of the collections cycle?" (PowerPoint presentation to bank.)
- "How can arbitration benefit the collections?" (PowerPoint presentation to bank.)
- "Using Arbitration for Collections & Recovery - Why It's Effective." (PowerPoint presentation to retail financing company.)

95. The National Arbitration Forum's solicitations also claim that the Forum's arbitration services provide an efficient and less costly way to collect debts:

- "With filing fees starting at $25, FORUM arbitration can be a quicker, more cost effective way to resolve collection disputes than traditional litigation." (E-mail to bank.)
- "Finally, as I'm sure you are aware, more and more of the largest card issuers are using arbitration as an efficient, cost-effective tool to resolve disputes, including collection disputes." (E-mail to bank.)
- "[Benefits of arbitration include a] marked increase in recovery rates over existing collection efforts." (PowerPoint presentation to bank.)
- "Arbitration can save up to 66% of your collection costs. Arbitration can save your money and your time collecting delinquent accounts. Sixty-six percent, according to *Corporate Cashflow*. Saving the money you've been spending on court costs, attorney fees, and discovery." (Advertisement.)

96. Moreover, the National Arbitration Forum's solicitations emphasize the coercive power that an arbitration clause has over consumers. For example, a PowerPoint presentation to one financial services company contains a table entitled "Reactions to Arbitration As Told By Customer Service Representatives" and features the following observations about arbitration:

- "The customer does not know what to expect from Arbitration and is more willing to pay"
- "They [customers] ask you to explain what Arbitration is then basically hand you the money"
- "You have all the leverage and the customer really has little choice but to take care of this account"

97. As noted above, the Forum's attempts to convince businesses to require that consumers forfeit their right to go to court is so persuasive that the Forum has even employed a Vice President of Clause Placement. The Forum describes "clause placement" as follows:

> Clause Placement (CP) is a unique sales function that acquires new filing prospects by placing FORUM solutions [i.e., what is already productized] into contracts in strategically valuable territories from sales-driven marketing leads.

98. Further, as noted above, during Forthright board meetings, the members discussed "methods to increase the number of large batch claims being processed by arbitrators, and changes in the process that would provide filers access to working capital," as well as "various opportunities to go after debt (issuer, debt buyer, and filer all present opportunities to steer claims into arbitration)[.]"

B. The National Arbitration Forum Assists Corporations in Drafting Mandatory Arbitration Clauses and Claims for Arbitration.

99. Beyond solicitations, the National Arbitration Forum sometimes assists businesses in drafting the mandatory arbitration clauses that appear in consumer agreements and that result in business being generated for the Forum. The National Arbitration Forum

distributes drafting guides to corporations interested in including mandatory arbitration clauses into their consumer agreements. These guides provide information on the National Arbitration Forum, arbitration in general, drafting tips, and sample language, among other things.

100. One such guide distributed by the National Arbitration Forum is entitled "Drafting Mediation and Arbitration Clauses - Practical Tips and Sample Language." In this guide, the National Arbitration Forum advises corporations that mandatory arbitration clauses should be included in all consumer agreements, because consumers are unlikely to agree to arbitration once a dispute arises:

> The most effective way for parties to make sure that disputes will be mediated or arbitrated, rather than litigated, is by agreeing to do so at the outset of their relationship, before disputes arise. As a number of commentators have noted, it is unlikely that parties will agree to alternative dispute resolution (ADR) after a dispute arises. At that stage, one party or the other will perceive that litigation offers some advantage, an advantage they will not choose to relinquish by agreeing to ADR....
>
> By including a pre-dispute mediation and arbitration clause in contracts, parties can be assured that future disputes will be routed into efficient, fair, effective forums—mediation and arbitration—rather than the lawsuit system.

101. In addition, the National Arbitration Forum's drafting guides contain sample arbitration clauses for businesses to insert in their consumer agreements. For example, one "Standard Arbitration Clause" of the Forum reads as follows:

> The parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. Information may be obtained and claims may be filed at any office of the National Arbitration Forum, at www.adrforum.com, or by mail at P.O. Box 50191,

Minneapolis, MN 55405. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

102. This and other sample arbitration clauses are made available by the National Arbitration Forum for corporations to insert into their consumer agreements.

103. The National Arbitration Forum also distributes "Arbitration Starter Kits" to corporations. In these kits, the Forum recommends that corporations include mandatory arbitration clauses in their agreements. The kits advise businesses to "Place a simple clause—an arbitration clause—in every contract."

104. In addition, the Starter Kits advise businesses that a mandatory arbitration clause will allow them to "take control of collections":

> The National Arbitration Forum's uniform Code of Procedure ensures that awards are fast, affordable, predictable and fair—wherever the dispute or claim arises—using the same rules and procedures for every case, every time. Starting with a simple clause—an arbitration clause—in your contracts, you take control of collections and claims…without a lawyer…from your own office.

105. The Starter Kits also emphasize the role that mandatory arbitration clauses have on managing the risks of collections, quoting the corporate counsel for Deutsche Financial Services, who states: "'We will not extend credit without an arbitration agreement. It's the only way to control the costs and manage the risks of lending and collection.'"

106. Moreover, the National Arbitration Forum offers direct assistance to corporations to draft mandatory arbitration clauses for their consumer agreements:

- "[I]f your organization is looking to revise its existing arbitration clause or is not yet using arbitration as a legal remedy, I would be more than happy to provide you with drafting tips and sample language as well as answer any questions you may have about the arbitration process." (E-mail to bank.)

- "Has [bank] considered using arbitration as a legal remedy? If so, I would be more than happy to provide you with best practices and answer any questions you may have about the arbitration process." (E-mail to bank.)

C. The National Arbitration Forum Provides Other Assistance to Companies.

107. The National Arbitration Forum sometimes offers assistance to companies in preparing arbitration claims—i.e., the equivalent of a summons and complaint in a court of law.

108. For example, in some cases, the National Arbitration Forum provides an Electronic Filer Liaison, who prepares draft claim forms for businesses or their lawyers. One such Liaison sent the following e-mail to a debt collection law firm regarding a claim for purchased Discover Card accounts:

> I have attached the initial draft of the claim form you will use on your purchased [D]iscover accounts. Please review this and make any changes necessary. Once we have agreed on the form and you have given approval I will set up this profile on our end. I will be sending you initial drafts for your other accounts shortly.

109. The referenced attachment includes a draft arbitration claim and notice of arbitration regarding an alleged credit card debt to be filed in the National Arbitration Forum.

110. The National Arbitration Forum has also counseled companies on legal trends affecting arbitration. For example, in an e-mail to a bank, Forthright informs the bank that it provides periodic updates on case law and legislative issues to businesses who use the Forum:

> I would appreciate receiving a copy of the arbitration clause for our records as we maintain a database of clauses in which FORUM is named. These are separated by industry and cross-referenced with case law and legislative updates that we are tracking. Should we notice a change that might impact the application of the clause, we can provide relevant information should you need to react.

111. The National Arbitration Forum also refers companies to debt collection law firms, including Mann Bracken. For example, in a PowerPoint presentation to a retailer's finance company, the Forum provides contact information for so-called "Arbitration Representatives," which includes contact information for the debt collection law firms Mann Bracken and Wolpoff & Abramson.

112. In short, the National Arbitration Forum reaches out to, and in some cases actively assists, the very corporations that may bring collection arbitrations against consumers—outreach that is at odds with the Forum's public image of independence, neutrality, similarity to a court, and lack of ties to parties that appear before it and that is not in the best interests of ordinary consumers. Defendants' failure to disclose these ties is also a material omission.

COUNT I
PREVENTION OF CONSUMER FRAUD ACT

113. Plaintiff re-alleges all prior paragraphs of this Complaint.

114. Minn. Stat. § 325F.69, subdivision 1 (2008) provides:

> The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided in section 325F.70.

115. The term "merchandise" within the meaning of Minn. Stat. § 325F.69 includes services. *See* Minn. Stat. § 325F.68, subd. 2 (2008).

116. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69, subd. 1. Defendants have engaged in deceptive and fraudulent practices, and have made false and misleading statements, with the intent that other rely thereon in connection with the sale of Defendants' services. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

COUNT II
UNIFORM DECEPTIVE TRADE PRACTICES ACT

117. Plaintiff re-alleges all prior paragraphs of this Complaint.

118. Minn. Stat. § 325D.44, subdivision 1 (2008) provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

> (5) represents that goods or services have…characteristics…benefits…that they do not have…
>
> (7) represents that goods or services are of a particular standard, quality, or grade…if they are of another;…
>
> (9) advertises goods or services with intent not to sell them as advertised…
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

119. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325D.44, subd. 1. Defendants have engaged in deceptive practices by representing that services have characteristics and benefits that they do not have; representing that services are of a particular standard, quality, or grade when they are of another; advertising services with intent not to sell them as advertised; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Uniform Deceptive Trade Practices Act.

COUNT III
FALSE STATEMENTS IN ADVERTISING ACT

120. Plaintiff re-alleges all prior paragraphs of this Complaint.

121. Minn. Stat. § 325F.67 (2008) provides, in part, that:

> Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster,

> bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

122. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.67. Defendants have placed before the public statements that are untrue, deceptive, and misleading, with intent to sell or increase the consumption of services. By failing to disclose and omitting material facts, Defendants have further made deceptive and fraudulent public statements in violation of the False Statements in Advertising Act.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Defendants as follows:

1. Declaring that Defendants' acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;

2. Enjoining Defendants' and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in deceptive practices, or making false or misleading statements, in violation of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;

3. Awarding judgment against Defendants for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;

4. Awarding Plaintiff its costs, including costs of investigation and attorneys' fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

5. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: July 14, 2009

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

ALAN GILBERT
Solicitor General

NATHAN BRENNAMAN
Assistant Attorney General

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ATTORNEYS FOR PLAINTIFF
STATE OF MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2008).

JEFFREY J. HARRINGTON

AG: #2474389-v1

ACCRETIVE

Accretive and NAF

August 2006

ac·cre·tive (ə · krē · tiv): the process of creating value through addition or inclusion

Proprietary & Confidential

ASSISTANCE TO NAF

Creative Thought Partnership

- Our view: A good partner pushes management's thinking on how to drive to desired outcomes and to resolve roadblocks. We focus on contributing to this dialogue through long experience and fact-based analysis
- We have a very strong track record developing creative ways to deliver value, to structure economic relationships, and to gain market acceptance

Enable management to pursue new strategic initiatives

- Counsel to management based on deep market analysis
- Domain expertise and rich relationships in selected industries
- Dedicated Accretive team to explore acquisitions, adjacent markets, and niche opportunities
- Capital to fund expansion

Sales and marketing assistance

- Active role in landing new customers / partners – proven history from prior investments
- Leverage Accretive network for introductions
- Experience structuring landmark relationships in emerging market segments

Drive process excellence across the organization

- Extensive background in process re-engineering (six sigma) to improve efficiency and effectiveness
- Apply "lessons learned" from a wide range of process-intensive businesses
- Recruit operational specialists to focus on process improvements

Help build a world-class organization

- Recruit industry leaders and visionaries to Board
- Augment management team, as required
- Leverage powerful tools we have developed to assess the likelihood of success of a new hire

NAF – STRATEGIC VISION

Accretive has an expansive view of NAF's potential:

- Arbitration expands to become a comprehensive, alternative legal system
- NAF becomes the primary venue for resolution of high-volume, low-ticket disputes
- NAF transforms the process by which payment issues are resolved:
  - In established markets, such as credit card, NAF exploits clause placements and becomes the preferred collections tactic where speed and cost are critical considerations. Arbitration should capture at least 50% of the volume currently placed in litigation
  - In new industries, such as healthcare, NAF Procedures are used early and consistently as the standard method for resolving payment disputes. By playing a prominent role, NAF fundamentally shapes the collections players and tactics that emerge in these industries
- NAF sits at the center of a broad arbitration ecosystem, giving rise to a range of specialist firms that serve as sources of cases or as post-award processors
- Through creativity and flexibility, NAF continually expands into new applications and potentially geographies.

From: Kelly, Mike

Sent: Monday, November 20, 2006 5:18 PM

To: 'Madhu Tadikonda'

Subject: Comps

Attachments: naf Comps vPHH.XLS

Madhu – I look forward to working with you too. I do see the synergies as well, which is in part why I wanted to get you and Michael in front of Ed in the first place. I hope we can reach an agreement. There are numerous interesting BD opportunities for us, as well as a couple of acquisition candidates to explore. The additional resources (capital and intellectual) that your team can bring will be most welcome. We do, however, have a long way to go in a short time and a considerable bridge to gap.

I will give you a call shortly to talk about all of this. I have been waiting to circle back with our corporate tax lawyers about corporate formation issues. We remain deeply concerned about walling any deal off any deal from Mann Bracken. The shared ownership issue concerns us on many levels. I wanted to put some additional thinking around the structural issues.

Due to time constraints, however, I thought it best to send you our threshold parameters:

1. No leveraging any assets of the Forum. This is a cash deal.
2. A non-refundable fee to take us off the market during negotiations – 5% of the value of the conveyed interest.
3. Formation of a new fund as the investment vehicle (no public information connecting Accretive with the fund that ultimately acquires and holds the minority interest in the Forum).
4. Confidentiality and non-compete provisions pre and post closing.
5. On-going Chinese wall between Mann Bracken and the Forum.
6. 10% equity into a pool for management.
7. Ed has set aside some cash on the books, which is not part of the deal – but I assume you are aware that you are not buying the cash.
8. It's unclear what Michael meant in his letter by "standard minority shareholder protections." The protections we would consider would be consistent with those of current minority shareholders relative to futures dispositions, dilutive acts, etc. We will not transfer control of business level decisions, such as P & L, personnel, etc.

I cannot overstate our concern over the Mann Bracken relationship. Although I do not have any solutions off the top of my head, we should certainly plan for unwinding any deal in the event shared ownership becomes an acute issue.

Assuming we can get past the threshold issues, I did want to get you the comps we have so that you can review them and circulate as appropriate. I pulled in as much free research as I could squeeze out of old clients and friends and focused on the attached comp's. The spreadsheet attached captures some companies that we believe mimic the kind of cost saving/"efficiency driving" attributes the Forum possesses. You will find that most of these businesses 1) are growing at the same rate as our projections, 2) are service companies and 3) are businesses that provide cost savings to their clients through best practices. Note the LTM EBITDA multiples of each of these businesses. For your background, the bankers I have spoken with advised not to talk to anyone unless the multiple offered starts with a 2.

I look forward to discussing these with you further.

Michael F. Kelly
Chief Operating Officer
National Arbitration Forum
6465 Wayzata Blvd., Suite 500

Fund and by Investor

AGORA FUND I LP (Accretive II, LP)

Accretive II GP, LLC

[redacted]

AGORA FUND I BLOCKER LP (Accretive II Blocker, LP)

Accretive II GP, LLC

[redacted]

AGORA FUND I COINVESTMENT LP(Accretive II Coinvestment, LP)

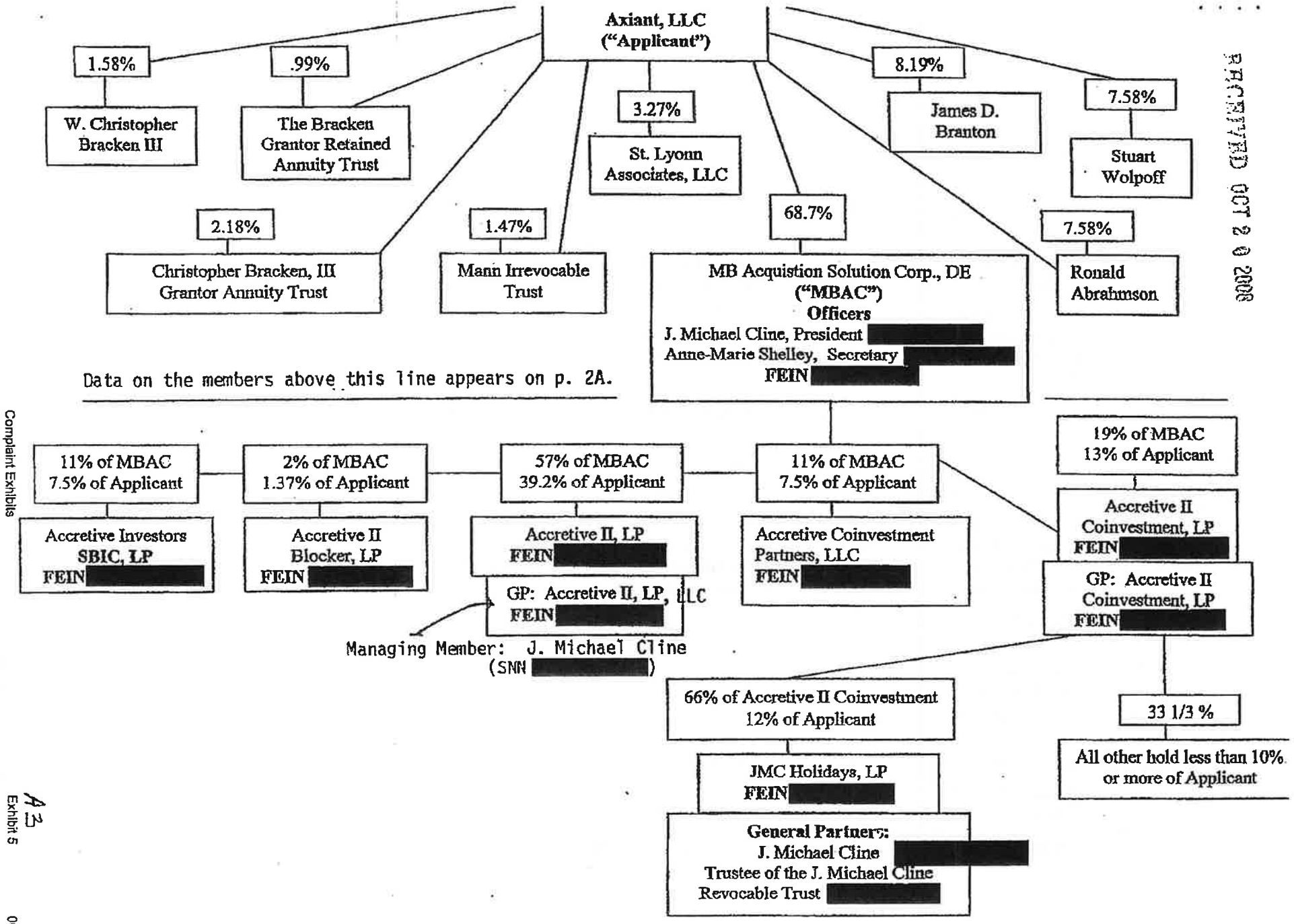
Accretive II GP, LLC
JMC Holdings, LP
Edgar Bronfman, Jr.

[redacted]

0000356

FORTHRIGHT – ACCRETIVE PRIORITIES FOCUS

Key Issue	Status	Next Steps	Accretive Priority
New Growth Opportunities	▪ Expansion of arbitration services – serving and confirmation ▪ Small claims court administration for debt buyers ▪ Expansion of PIP programs	▪ Launch pilots for expansion and small claims court ▪ Hire senior executive to build PIP business	▪ Monitor the expansion and small claims efforts ▪ Introduce Forthright to Axiant executives ▪ Axiant files in small claims court – different standards for filing / appearance when a corp is filing ▪ Develop profile for new hire
Chase Arbitration Volume	▪ Currently at 3K filings per month – prior to Chase cutting MB volume, was running at 5K	▪ Speak w/ Hanna / Zwicker to understand arb rates and whether they are using AAA / legal	▪ No change in Chase arbitration filling rates – Hanna / Zwicker may be working w/ AAA or doing legal
SF Lawsuit / MN AG inquiry	▪ In document discovery	▪ Work with MN AG to get public announcement to investigation has found no wrong-doing	▪ None
Congressional Inquiry	▪ In document discovery	▪ Continue to field inquiries	▪ None
AFA Legislation	▪ Bill introduced to Judiciary	▪ Waiting for bill to hit house floor ▪ Working w/ lobbyist to get alternative bill introduced – lining up advocates in House and Senate	▪ Mike K working on the package of amended language / alternative bill to send to us ▪ Monitor process – may be able to use Edgars
RIF	▪ Areas for RIF have been identified	▪ To be implemented by May	▪ Monitor



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Complaint Exhibits

EXHIBIT A 50

A3 Exhibit 5

007

Reactions to Arbitration

As told by CSR's

Reaction	Example
How and in what way does possibility of arbitration carry weight in customers' eyes?	• "The Customer does not know what to expect from Arbitration and is more willing to pay" • "They ask you to explain what Arbitration is then basically hand you the money"
How does this help you as a CSR?	• "Because you are taken seriously in the customers' eyes and the calls flow more smoothly" • "You have all the leverage and the customer really has little choice but to take care of this account"
How has the Arbitration Team Benefited You as a CSR?	• "Much more relaxed working environment due to having more leverage and the feeling of teamwork" • "It made me a better negotiator"

NATIONAL ARBITRATION FORUM

EXHIBIT B

Assistance to ACCRETIVE INVESTORS SBIC, LP in NY (FY 2004)

(MAP IT)

Search Criteria Used (More)		
Federal Fiscal Year	2004 GO	
Level of Detail	Summary	GO
Type of Report Output	HTML	GO

Summary

Fiscal Year: 2004
Federal dollars: **$100,500,000**
Total number of recipients: **1**
Total number of transactions: **2**
Get list of recipients
Get list of transactions

Top 5 Programs

59.011: Small Business Investment Companies	$100,500,000

Top 5 Known Congressional Districts where Recipients are Located

Invalid district:	$0

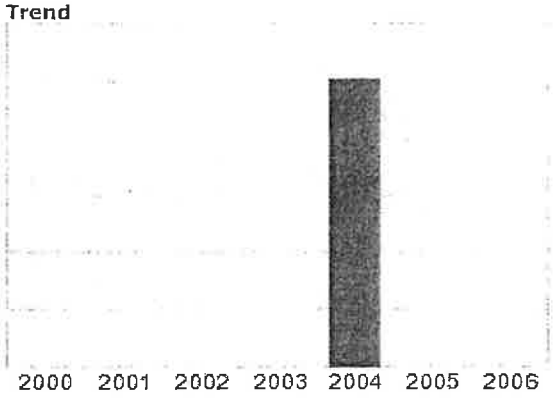
Top 5 Agencies Providing Assistance

Small Business Administration	$100,500,000

Top 10 Recipients

ACCRETIVE INVESTORS SBIC, LP	$100,500,000

Trend



Recipient Type

Individuals	$100,500,000
Nonprofits	$0
Other	$0
Higher Education	$0
Government	$0
For Profits	$0

2000	$0
2001	$0
2002	$0
2003	$0
2004	$100,500,000
2005	$0
2006	$0
2007 3Q *	$0

Assistance Type

Loans (both direct and guaranteed)	$100,500,000
Other	$0
Insurance	$0
Grants and Cooperative Agreements	$0
Direct Payments (both specified and unrestricted)	$0

*Note: FY 2007 only includes first three quarters.

Expand all summaries to all values, not just top 5 or 10

END OF REPORT

This search was done on June 4, 2009.

(MAP IT)

Search Criteria Used		
Federal Fiscal Year	2004 GO	
Assigned Recipient ID	9748	
Sort By	No sort (summary only)	
Level of Detail	Summary	GO
Type of Report Output	HTML	GO

The assistance database is compiled from government data last released on 04/01/2008

This search result was produced as a project of **OMB Watch**. The data was obtained from the U.S. Census Bureau's **Federal Assistance Award Data System** (FAADS).

EXHIBIT C

Incident Period: 02/28/2009 and continuing.

Effective Date: 03/10/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bastrop.

Contiguous Counties: Texas.

Caldwell, Fayette, Lee, Travis, Williamson.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere;	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11690 5 and for economic injury is 11691 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 10, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–5735 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0627]

Accretive Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Accretive Investors SBIC, L.P., 51 Madison Avenue, 31st Floor, New York, NY, 10010, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Accretive Investors SBIC, L.P. proposes to provide equity financing to Axiant, LLC, 2727 Paces Ferry Road, Atlanta, GA 30339. The financing is contemplated for working capital and debt repurchase.

The financing is brought within the purview of 107.730(a)(1) of the Regulations because Accretive II, LP; Accretive Blocker, LP; Accretive II Coinvestment Partners, LP and Accretive Coinvestment Partners, LLC, all Associates of Accretive Investors SBIC, L.P., in the aggregate own more than ten percent of Axiant, LLC.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 5, 2009.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–5738 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice to terminate the Nonmanufacturer Rule Class Waiver for Product Service Code (PSC) 3930, Warehouse Trucks and Tractors, Self-Propelled.

SUMMARY: The U.S. Small Business Administration (SBA) has terminated a waiver of the Nonmanufacturer Rule for PSC 3930, Warehouse Trucks and Tractors, Self-Propelled based on SBA's recent discovery of small business manufacturers. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in SBA's 8(a) Business Development (BD) Program to provide the products of small business manufacturers or processors on such contracts.

DATE: This waiver is effective April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Edith G. Butler, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in the SBA's 8(a) Business Development Program, provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c).

The SBA defines "class of products" based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS). In addition, SBA uses Product Service Codes (PSC) to identify particular products within the NAICS code to which a waiver would apply.

SBA announced its decision to grant the waiver for PSC 3930 in the **Federal Register** on September 13, 1990. 55 **Federal Register** 38313 (1990). SBA received a request on December 18, 2008, to terminate the waiver to the nonmanufacturer rule for Warehouse Trucks and Tractors, Self-Propelled, under PSC 3930. In response, on

SENT VIA FACSIMILE AND U.S. MAIL

License No. 02/72-0627

FEB 17 2009

Mr. J. Michael Cline
Accretive Investors SBIC, LP
51 Madison Avenue – 31st Floor
New York, NY 10010

Dear Mr. Cline:

The U.S. Small Business Administration, Office of SBIC Operations ("SBA") has reviewed your letter dated January 26, 2009 requesting approval for Accretive Investors SBIC, LP ("Accretive" or "Licensee") to [redacted]. The Licensee seeks approval to invest [redacted] in portfolio company Axiant, LLC ("Axiant" or "Company"). [redacted] The proposed financing also represents a Conflict of Interest financing as defined under Section 312 of the Small Business Investment Act ("Act") and §107.730 of the SBIC Regulations, in that Associates of the Licensee hold a direct financial interest in Axiant of greater than ten percent.

The Licensee and its Associates – Accretive II, LP; Accretive Blocker, LP; Accretive II Coinvestment Partners, LP and Accretive Coinvestment Partners, LLC (collectively "Accretive Associates") – own approximately [redacted]% of the Company's outstanding equity interests. The Accretive Associates own approximately [redacted]% of the Company's outstanding equity interests. Therefore, Axiant is an Associate of the Licensee as defined at §107.50, and this financing constitutes Financing an Associate under §107.730(a) of the SBIC Regulations. Because the Accretive Associates [redacted] of the SBIC Regulations.

The Licensee previously invested [redacted] in Axiant. The proposed investment would [redacted] The Regulatory Capital figure is adjusted per Section 107.740(a) of the regulations, which allows add backs of return of capital distributions made during the five years preceding the date of the proposed Overline financing. The Licensee [redacted]

Axiant is an IT service provider that enables consumer finance creditors and debt purchasers to optimize their legal collections efforts. The Company partners with regional law firms to pursue legal cases against defaulted accounts. You note that [redacted] the Company. First, [redacted] Second, the Company's [redacted] As a result, the Company [redacted]

[redacted]

Funding from the Licensee would have required SBA's prior approval [redacted], and you did not believe at the time that [redacted]

The funding [redacted]

In addition to [redacted] the [redacted] provided for [redacted] of working capital [redacted] You believe that [redacted] working capital, [redacted]. You anticipate [redacted].

If approved, the proposed financing would be Accretive's [redacted]

Based on your representations and documentation, SBA grants approval for [redacted]

Also based on your representations and documentation, the proposed investment is consistent with the purposes of the SBIC program and equitable to all parties. Accordingly, SBA hereby grants the Licensee an exemption from Section 312 of the Act and Section 107.730(a)(1) of the SBIC Regulations for the proposed investment in Axiant. This exemption is specifically for this financing only. Given that the Licensee and the Accretive Associates [redacted].

As required in §107.730(g), SBA will publish notice of this transaction in the Federal Register. You are not required to wait for the Federal Register notice publication to proceed with this financing.

Public Note Requirement Waiver

Section §107.730(g) also requires that a Licensee publish notice of a Conflict of Interest transaction in a newspaper of general circulation in the locality most directly affected by the transaction before SBA will approve such a transaction. While changes to the Act have removed the mandatory Public Notice requirement for a Conflict of Interest investment, Section §107.730(g) does not yet reflect the changes to the Act and thus the existing language requiring a Licensee to publish Notice of a Conflict of Interest transaction still governs. Given the change to the Act, the SBA grants the Licensee a waiver from the Public Notice requirement in §107.730(g) for the proposed financing. This waiver applies only for this financing and should not be construed as a waiver for any future Conflict of Interest investments that the Licensee may contemplate.

If there are additional questions, please contact Lyn Womack at (202) 205-2416. Please keep Lyn apprised of the status of the [redacted] investment, including any changes to the terms of the investment, and the ongoing performance of Axiant.

Sincerely,

(signed) Harry E. Haskins

Harry Haskins
Acting Associate Administrator
for Investment

OSO:Womack:draft:2/5/2009:printed in final:mjg:2/9/09
cc:Area IV, Womack, Knott, Maddrie, Inv. 6-7, Chron, O/E – Giovanelli (New York)
Control No.01/09-069, Code:D-20, S:\Area IV\Womack\Accretive Investors SBIC [redacted] Approval Letter for Axiant – Feb 2009

Womack_____
Knott_____
Maddrie_____

Accretive Investors SBIC, LP

1/26/2009

To: Mr. Steve Knott
Office of SBIC Operations
U.S. Small Business Administration
409 Third Street, S.W., Suite 6300
Washington, D.C. 20416

From: J. Michael Cline
Accretive, LLC
51 Madison Avenue, 31st Floor
New York, NY 10010

Re: Accretive Investors SBIC, LP
02/72-0627

Dear Mr. Knott:

Accretive Investors SBIC, LP (the "Licensee"), hereby requests that the SBA consent to Licensee's investment of [redacted] that holds direct equity interests in the operating company, Axiant, LLC, a Delaware limited liability company (the "Portfolio Company" or "Axiant"). This investment [redacted], when combined with Licensee's prior investments in the Portfolio Company [redacted] would result in [redacted] If this [redacted] is approved, [redacted]

Redacted under FOIA Exemption 4

1944278-v.2

Redacted
FOIA Exemption 4

To assist your review, the remainder of this letter addresses each component of [redacted]

A. **SBIC Financial Statements**

Licensee's Financial Statements (pages 2 through 4 of SBA Form 468) can be found in the attached documents.

B. **Schedule of All [redacted]**

The Licensee currently has no [redacted]

C. **Affiliation with Small Concerns**

The Portfolio Company is not an Affiliate of the Licensee pursuant to 13 CFR Section 121.103(b)(1). However, the First Accretive Investment Vehicle, the Accretive Investment Vehicle through which the Licensee initially invested in the Portfolio Company together the Second Accretive Investment Vehicle, are the holders of equity interests in the Portfolio Company with ownership of approximately [redacted]% of the outstanding equity interests of the Portfolio Company [redacted]. The Board of Directors of Portfolio Company is currently comprised of [redacted] directors, [redacted] of whom are designated by [redacted]. Moreover, a [redacted] outstanding equity interests of the Portfolio Company are required for [redacted] regarding the Portfolio Company. Therefore, [redacted]. Finally, the Accretive Investment Vehicles and the Accretive designees [redacted]

[redacted]

D. **Financial Statements of the Small Concerns**

Portfolio Company's Financial Statement can be found in the attached documents.

E. **Description of the Investment**

In the table below, please find a detailed schedule of investments made by the Licensee [redacted]

All investments [redacted] All shares [redacted] of Axiant, LLC [redacted]

Date	Amount Invested	No. of Shares Acquired	Cumulative Shares Acquired	Total Shares Outstanding	Percentage of Ownership
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Redacted

FOIA Exemption 4

F. Other Participants in the Financing

Redacted

FOIA Exemption 4

G. Reasons for [redacted] Investment

Redacted

FOIA Exemption 4

Redacted

FOIA Exemption 4

H. **Financial Performance**

Redacted

FOIA Exemption 4

I. Anticipated Exit

Accretive anticipates [redacted]

The Portfolio Company's unique national footprint and collections success with leading credit card issuers is expected to make [redacted] Accretive expects [redacted]

For these reasons, we request that the SBA consent to [redacted] In Axiant on the terms and conditions described above. Please contact me at 646-282-3139 if you have questions with regard to the foregoing or require additional information to evaluate our [redacted] request.

Sincerely,

J Michael Cline
Managing Member

Axiant, LLC
(formerly MB Solutions, LLC)

Financial Statements
December 31, 2007

Redacted in entirety

Total : 21 pages

FOIA Exemption 4

McGladrey & Pullen
Certified Public Accountants

INFORMATION

SBA FORM 468
(PARTNERSHIP SBICs)

SHORT FORM

OMB Approval No 3245-0063
Expiration Date 10/31/2007

NAME OF LICENSEE:	Accretive Investors SBIC, LP
LICENSE NUMBER:	02/72-0627
STREET ADDRESS:	51 Madison Avenue, 31st Floor
CITY, STATE, AND ZIP CODE:	New York, NY 10010
COUNTY:	New York
EMPLOYER ID NUMBER:	05-0568262
FOR THE REPORTING PERIOD ENDED:	09/30/2008 MONTHS: 9

A - FUND FOCUS

B - OWNERSHIP PRIVATELY OWNED BY INDIVIDUALS

Redacted in Entirety
Total pages: 18
FOIA Exemption 4

Please Note: The estimated burden for completing this form is 15 hours per response. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have questions or comments concerning this estimate or other aspects of this information collection, please contact the US Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3425-0063), Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

Incident Period: 02/28/2009 and continuing.

Effective Date: 03/10/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bastrop.

Contiguous Counties: Texas.

Caldwell, Fayette, Lee, Travis, Williamson.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere;	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11690 5 and for economic injury is 11691 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 10, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9-5735 Filed 3-16-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72-0627]

Accretive Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Accretive Investors SBIC, L.P., 51 Madison Avenue, 31st Floor, New York, NY, 10010, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Accretive Investors SBIC, L.P. proposes to provide equity financing to Axiant, LLC, 2727 Paces Ferry Road, Atlanta, GA 30339. The financing is contemplated for working capital and debt repurchase.

The financing is brought within the purview of 107.730(a)(1) of the Regulations because Accretive II, LP; Accretive Blocker, LP; Accretive II Coinvestment Partners, LP and Accretive Coinvestment Partners, LLC, all Associates of Accretive Investors SBIC, L.P., in the aggregate own more than ten percent of Axiant, LLC.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 5, 2009.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9-5738 Filed 3-16-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice to terminate the Nonmanufacturer Rule Class Waiver for Product Service Code (PSC) 3930, Warehouse Trucks and Tractors, Self-Propelled.

SUMMARY: The U.S. Small Business Administration (SBA) has terminated a waiver of the Nonmanufacturer Rule for PSC 3930, Warehouse Trucks and Tractors, Self-Propelled based on SBA's recent discovery of small business manufacturers. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in SBA's 8(a) Business Development (BD) Program to provide the products of small business manufacturers or processors on such contracts.

DATE: This waiver is effective April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Edith G. Butler, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in the SBA's 8(a) Business Development Program, provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c).

The SBA defines "class of products" based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS). In addition, SBA uses Product Service Codes (PSC) to identify particular products within the NAICS code to which a waiver would apply.

SBA announced its decision to grant the waiver for PSC 3930 in the Federal Register on September 13, 1990. 55 Federal Register 38313 (1990). SBA received a request on December 18, 2008, to terminate the waiver to the nonmanufacturer rule for Warehouse Trucks and Tractors, Self-Propelled, under PSC 3930. In response, on

U.S. SMALL BUSINESS ADMININSTRATION
WASHINGTON,D.C. 20416

Mailed date
JAN 6 09

License No: 02/72-0627

December 30, 2008

General Partner
Accretive Investors SBIC, L.P.
51 Madison Avenue, 31st Floor
New York, NY 10010

Dear General Partner:

The Small Business Administration, Office of SBIC Operations has reviewed the Examination Report dated December 30, 2008, issued on Accretive Investors SBIC, L.P. ("Licensee") for the 12 month period ended September 30, 2008. [redacted]

We appreciate your assistance during the examination. Should you have any questions, you may contact your Financial Analyst, Lyn F. Womack, at (202) 205-2416.

Sincerely,

(Signed) Steve Knott

Steven P. Knott
Chief, Area IV
Office of SBIC Operations

cc: Knott
Womack
Office of Examinations
Inv. 6-7
Code: D-18
Chron File

U.S. SMALL BUSINESS ADMINISTRATION
INVESTMENT DIVISION
OFFICE OF SBIC EXAMINATIONS

DATE: December 30, 2008

TO: Marja Maddrie
Director of SBIC Operations

FROM: David J. Giovanelli
Examinations Manager

SUBJECT: Accretive Investors SBIC, LP
New York, New York
License Number: 02/72-0627

We have completed our examination of Accretive Investors SBIC, LP (licensee), a Small Business Investment Company (SBIC) located in New York, New York. The purpose of the examination was to determine whether the licensee complied with the laws, rules and regulations, and established policies governing the SBIC program. [redacted]

Prior to the examination, we contacted the financial analyst to find out whether the Office of SBIC Operations had any concerns or outstanding issues to be addressed during the examination. [redacted]

The licensee's office is located at 51 Madison Avenue, New York, New York. Accretive Technology Partners, LLC, the licensee's investment advisor, manages the licensee pursuant to a management agreement approved by the Small Business Administration (SBA). The licensee's general partner is Accretive Associates SBIC, LLC. A schedule of the licensee's general and limited partners is included in this report as Exhibit 2.

During the current examination period, [redacted]. The licensee also [redacted] during the examination period, [redacted]. As of September 30, 2008, the licensee [redacted] An unaudited comparative balance sheet of the licensee, as of September 30, 2008 and September 30, 2007, is included in this report as Exhibit 1.

The licensee was examined for the 12-month period ending September 30, 2008. During this period, [redacted]. We reviewed all of these financing transactions. We completed the on-site phase of our review on December 10, 2008.

Our examination included reviews of cash on deposit, wire transfers, supporting documentation for disbursements and other financial records. In addition, we verified [redacted] as well as the ownership of the licensee's equity. Although we reviewed selected general ledger accounts, we did not perform a financial audit and, [redacted]

For the financings provided during the examination period, we reviewed the financing agreements, stock certificates, financial statements and supporting documentation, including background information on the small concerns and their principals. For selected small concerns, we obtained credit reports and requested verification of the financings by direct confirmation.

As part of our examination, we reviewed the licensee's internal controls over the safeguarding of securities. We also reviewed the licensee's valuation procedures, as well as supporting documentation for the valuation of its portfolio as of June 30, 2008.

Please provide me with a copy of your letter forwarding our report to the licensee, as well as any further correspondence pertaining to the report. If you would like to discuss the report, or need additional information, please contact me at (212) 264-2929.

Attachments

Exhibit 1: Unaudited Comparative Balance Sheet

Accretive Investors SBIC, LP

	As of 9/30/08	9/30/07
Assets		
Loans and Investments		
Equity interests	$ [redacted]	$ [redacted]
Unrealized appreciation (net of depr.)		
Total	$ [redacted]	$ [redacted]
Cash	$ [redacted]	$ [redacted]
Invested idle funds		
Other assets		
Total Assets	$ [redacted]	$ [redacted]
Liabilities and Capital		
Liabilities		
Participating securities held or guaranteed by SBA	$ [redacted]	$ [redacted]
Accounts payable and accrued items		
Other liabilities		
Total Liabilities	$ [redacted]	$ [redacted]
Capital		
Partners' contributed capital	$ [redacted]	$ [redacted]
Syndication costs		
Unrealized gain (loss) on securities held		
Undistributed realized earnings (deficit)		
Non-cash gains/income		
Total Capital	$ [redacted]	$ [redacted]
Total Liabilities and Capital	$ [redacted]	$ [redacted]

Note: Prepared from trial balance provided by licensee.

Exhibit 2: Schedule of General and Limited Partners

Accretive Investors SBIC, LP

September 30, 2008

	[redacted]	[redacted]
General Partner		
Accretive Associates SBIC, LLC	$ [redacted]	[redacted]
Limited Partners		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
Totals	$ [redacted]	[redacted]

DOCUMENTS EXEMPTED FROM DISCLOSURE (FOIA)
Accretive Investors SBIC, LP

Document Name or Description	FOIA Exemption	No. of pages
Annual SBIC 468 & Commitment Review	Exemption #5 – intra agency deliberative process	2
Preliminary Capital Impairment Worksheet for 12/31/2008	Exemption #5 – intra agency deliberative process	1
Risk Rating Worksheet dated April 8, 2009	Exemption #5 – intra agency deliberative process	1
SBA Form 468 as of 12/31/2008	Exemption #4 – commercial or financial information obtained from a person/entity and privileged or confidential	42
Minutes of the meeting of the members of Accretive Associates SBIC, LLC	Exemption #4 – commercial or financial information obtained from a person/entity and privileged or confidential	1
Written consent of the members of Accretive Associates SBIC, LLC as the General Partner of Accretive SBIC, LP	Exemption #4 – commercial or financial information obtained from a person/entity and privileged or confidential	9
SBA Form 468 as of 3/31/2009	Exemption #4 – commercial or financial information obtained from a person/entity and privileged or confidential	19

Testimony
Of
Lori Swanson
Minnesota Attorney General

United States Judiciary Committee
October 13, 2011
226 Dirksen Senate Office Building
2:00 p.m.

"Arbitration: Is It Fair When Forced?"

Good afternoon. Thank you for the opportunity to testify before the United States Senate Judiciary Committee on the topic of mandatory arbitration of consumer disputes.

I. Arbitration of Consumer Disputes.

The Federal Arbitration Act--passed in 1925--was originally designed to facilitate merchants of relatively equal bargaining power to agree to arbitration after a dispute arose and to mutually select an arbitrator to resolve the dispute. In recent years, however, companies expanded arbitration to a wide range of consumer contracts where the consumer has little bargaining power.

The right to have disputes resolved through an impartial judge or jury is deeply imbedded in our democracy and our values. In recent years, however, American consumers--in one contract or another--have given up the right to have their day in court through language contained in the "fine print" of consumer agreements. Large corporations often include--in the fine print of their consumer contracts--pre-dispute arbitration clauses, in which the consumer may be required to waive--in advance--his or her right to have a dispute resolved in court. Instead, the consumer may be required to resolve the dispute through arbitration. This language is generally binding on the consumer even if he or she does not notice the arbitration clause.

II. National Arbitration Forum Lawsuit and Consent Judgment.

In 2009, the Minnesota Attorney General's Office filed a lawsuit against the National Arbitration Forum--the then-largest arbitration company in the country for consumer credit disputes--alleging that it misrepresented its independence and hid from consumers and the public its extensive ties to the collection industry.

The lawsuit alleged that the National Arbitration Forum deceptively represented to consumers and the public that it was independent and neutral, operated like an impartial court system, was not affiliated with any party, and did not take sides between parties.

The lawsuit alleged that the Forum worked behind the scenes--alongside creditors and against the interest of ordinary consumers--to convince credit card companies and other creditors to deprive consumers of their legal rights by inserting arbitration provisions in their customer agreements and then to appoint the Forum to decide the disputes. The lawsuit alleged that the Forum paid commissions to executives to convince creditors to put mandatory arbitration clauses in their customer agreements and to thereafter convince creditors to use the Forum to decide those claims, in order to generate arbitration filings in the Forum--and hence, revenue--for itself. In soliciting creditors to use its arbitration services, the Forum made representations that aligned itself against consumers, such as that "[t]he customer does not know what to expect from Arbitration and is more willing to pay," that consumers "ask you to explain what Arbitration is then basically hand you the money," and that "[y]ou [the creditor] have all the leverage [in arbitration] and the customer really has little choice but to take care of this account."

The lawsuit also alleged that the Forum had financial ties to the collection industry. Beginning in 2006 and through 2007, Accretive--a family of New York private equity funds--engineered two transactions. In the first transaction, Accretive formed several equity funds under the name "Agora" (meaning "Forum" in Greek), which invested $42 million in the Forum and obtained governance rights in it. In the second transaction, three of the country's then-largest debt collection law firms--Mann Bracken of Georgia, Wolpoff & Abramson of Maryland, and Eskanos & Adler of California--merged into one large national law firm called Mann Bracken. Accretive then acquired the majority interest in a debt collection agency called Axiant,

which acquired the collections operations of Mann Bracken. Through these transactions, Accretive took control of one of the country's largest debt collection enterprises and became affiliated with the Forum, the country's largest consumer collection arbitration company. The lawsuit alleged that, in 2006, the Forum processed just over 214,000 consumer collection arbitration claims, of which 125,000, or nearly 60 percent, were filed by these firms.

In the course of our year-long investigation, we heard from arbitrators who were "deselected"--or not given more cases--after ruling for the consumer or not awarding the credit card company any attorneys' fees. We heard from employees who were told to find arbitrators who were anti-consumer and not to assign additional cases to arbitrators who asked the creditors to provide evidence to support their claims. We also interviewed over 100 consumers who were confused by the process, were unaware they had agreed to arbitration, and did not feel they got a fair shake in arbitration.

The company signed a Consent Judgment to resolve the lawsuit. Under the Consent Judgment, the company is barred from the business of arbitrating credit card and other consumer disputes and must stop accepting new consumer arbitrations or in any manner participating in the processing or administering of new consumer arbitrations, such as arbitrations involving consumer debt, including credit cards, consumer loans, telecommunications, utilities, health care, and consumer leases.

III. Problems with Mandatory Arbitration in Consumer Contracts.

Our investigation of the Forum and interviews of consumers highlighted underlying problems with the arbitration of consumer disputes arising out of mandatory arbitration clauses in fine-print consumer contracts:

First, there is unequal bargaining power between consumers and large corporations, which often present consumers with "take it or leave it" fine print contracts. In almost every interview we conducted of consumers during our investigation of the Forum, we found that the consumer was not aware of the arbitration provision, in most cases never saw the provision, and was given virtually no opportunity to negotiate or reject the provision. Yet, through these provisions, consumers gave up their right to have their day in court.

Second, it was apparent from interviews with consumers, arbitrators, and employees of the Forum that arbitrators have a powerful incentive to favor the dominant party in an arbitration; namely, the corporation. There is a term commonly used in the arbitration industry called "repeat player bias," describing the phenomena where an arbitrator is more likely to favor the party that is likely to send future cases. Corporations, and not consumers, generally select which arbitration companies they will appoint to process disputes, and arbitration companies compete for this business. If a particular corporation selects a particular arbitration company to resolve disputes, that arbitration company makes money. If a particular arbitration company is not "friendly" enough to the corporation, the corporation can select another arbitration company to resolve its claims. Similarly, the arbitration company wields great power in selecting which arbitrators will be in its network. In the case of the Forum, arbitrators and employees told us that arbitrators who issued an award against the corporation, or who failed to award attorneys' fees against the consumer, were sometimes "deselected" and not appointed to future proceedings. This bias does not exist in a court, where the judge is not reliant on a dominant player for his or her future income.

Third, during our investigation of the Forum, we were told by consumers that because they were unaware of the arbitration provision, they often did not recognize the significance of

the arbitration notice serviced on them. In other words, since they did not know that they agreed to arbitration, and were unfamiliar with the arbitration process or the arbitration administrator, consumers told us they did not know they were obligated to respond to the arbitration notice. As noted above, the Forum's own documents describe it this way: "[t]he customer does not know what to expect from Arbitration and is more willing to pay," and consumers "ask you to explain what Arbitration is then basically hand you the money."

Fourth, the due process protections found in court may be lacking in arbitration. For instance, consumers subject to a mandatory arbitration clause generally have no right to appeal in most cases to a judge if there is an adverse arbitration ruling. Similarly, the arbitrator's decision may not be supported by a written order, so the consumer may not understand the basis for the decision and therefore may question the integrity of the process.

IV. Conclusion.

In short, while our Consent Judgment with the National Arbitration Forum may have removed a problem company from the consumer arbitration marketplace, it did not and cannot solve the systemic problems with mandatory pre-dispute arbitration clauses in fine-print consumer contracts. The Federal Arbitration Act has been interpreted by the federal courts to prohibit state legislatures from meaningfully regulating these clauses. Therefore, Congress is the only legislative body that can protect consumers from the unfairness that may arise from the use of mandatory arbitration clauses in consumer contracts.

Thank you for inviting me to this hearing.

AG: #2893601-v1