

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

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In re: : Chapter 11
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ADVANTA CORP., *et al.*,¹ : Case No. 09-13931 (KJC)
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 Debtors. : (Jointly Administered)
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Advanta Bank Corp., :
 Plaintiff, :
v. : Adv. Proc. No. 10-50795 (KJC)
Advanta Corp., : **Re: D.I. 9**
 Defendant. :
-----X

**MOTION FOR SHORTENED NOTICE AND AN EXPEDITED HEARING
ON THE EMERGENCY MOTION OF PLAINTIFF ADVANTA
BANK CORP. FOR DECLARATORY AND INJUNCTIVE RELIEF
IN CONNECTION WITH ITS AMENDED COMPLAINT**

Advanta Bank Corp. (“ABC”), by and through its undersigned counsel, hereby moves (the “Motion to Shorten”) this Court for the entry of an Order scheduling an emergency hearing on the Emergency Motion of Plaintiff Advanta Bank Corp. for Declaratory and Injunctive Relief in Connection with its Amended Complaint (the “Declaratory and Injunctive”

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

Relief Motion”), filed contemporaneously herewith, and limiting the notice required thereon. In support of this Motion to Shorten, ABC respectfully states as follows:

JURISDICTION

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

2. The statutory predicates for the relief requested herein are section 105 of Title 11 of the United States Code (11 U.S.C. § 101 *et seq.* as amended, the “Bankruptcy Code”), Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9006-1(e) of the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

BACKGROUND

3. Debtor Advanta Corp. (“Advanta”) is the common parent of an affiliated group of corporations, including ABC, which files consolidated tax returns for federal income tax purposes (the “Consolidated Group”) pursuant to the terms of a tax sharing agreement (the “Tax Sharing Agreement”) that exists between and among the Consolidated Group.

4. Under a recent amendment to the Internal Revenue Code (“IRC”), net operating losses may be carried back five years to offset taxable income paid by a corporate taxpayer during the preceding five years (the “Five-Year NOL Carryback”).

5. Unless an extension was timely sought, the deadline for the Debtor to file the 2009 consolidated federal income tax return (the “Tax Return”) for the Consolidated Group was this past Monday, March 15, 2010 (“Tax Deadline”).

6. On March 12, 2010, ABC filed its Emergency Motion of Advanta Bank Corp. for Entry of an Order Compelling Debtor Advanta Corp. to (I) Timely File a Request for an

Extension of Time to File 2009 Consolidated Federal Income Tax Return; or, in the Alternative, (II) Elect to Carry Back 2009 Consolidated Net Operating Losses Five Years (“ABC Tax Motion”) [D.I. 323]. Because ABC was given no information as to whether its parent, Advanta, would be filing the Tax Return by the Tax Deadline, the Motion sought the entry of an Order requiring Advanta to either timely secure an extension of time to file the Tax Return or, if it planned to timely file the Tax Return, to affirmatively elect the Five-Year NOL Carryback.

7. On March 14, 2010, ABC also filed the Complaint initiating this adversary proceeding. [Adv. Pr. D.I. 1]. The Complaint seeks relief identical to the ABC Tax Motion. In conjunction with the Complaint, ABC also filed its Emergency Motion of Plaintiff Advanta Bank Corp. for Temporary Restraining Order and Preliminary Injunctive Relief Against Defendant Advanta Corp. (“Emergency TRO Motion”) [Adv. Pr. D.I. 3], seeking the issuance of a temporary restraining order and preliminary injunctive relief against Advanta for those same reasons identified in the Complaint and the ABC Tax Motion. [Adv. Pr. D.I. 4]

8. On the morning of Monday, March 15, 2010, the Debtor its Objection to Motion to Compel Advanta Corp. to (I) Timely File a Request for an Extension of Time to File 2009 Consolidated Federal Income Tax Return; or, in the Alternative, (II) Elect to Carry Back 2009 Consolidated Net Operating Losses Five Years (the “Advanta Tax Objection”) [D.I. 332]. In its Objection, for the first time and despite previous attempts by ABC to learn of its intentions, the Debtor revealed that on the previous day, Sunday, it had filed the 2009 Tax Return and, equally important, “waiving the carryback of any portion of the consolidated group’s 2009 NOL, and filed an amended 2008 federal income tax return for its consolidated group electing the five-year carryback of its 2008 NOL.” Advanta Tax Objection, at ¶ 6.

9. As argued in the Declaratory and Injunctive Relief Motion, the Debtor's purported waiver of the Five-Year NOL Carryback in respect of 2009 losses, and its purported election of the Five-Year NOL Carryback as to 2008 losses, constituted the use and purported abandonment of estate property outside of the ordinary course of business. Such action could not have been accomplished without prior notice and a hearing pursuant to Section 363(b) of the Bankruptcy Code, and is therefore null and void.

RELIEF REQUESTED

10. Pursuant to Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Bankruptcy Rules 9007 and 2002(m), and Delaware Bankruptcy Local Rule 9006-1(e), this Court may shorten the notice period for the hearing to consider the Declaratory and Injunctive Relief Motion and grant expedited consideration thereof. Pursuant to Delaware Bankruptcy Local Rule 9006-1(e), no hearing on this Motion to Shorten is required.

11. By this Motion to Shorten, ABC respectfully requests that the time period for notice in connection with the Declaratory and Injunctive Relief Motion be shortened so that it may be heard on or before March 31, 2010.² ABC further requests that the Court allow any objections to the Injunctive Relief Motion to be heard at the hearing.

12. Cause exists to shorten the time by which a hearing should be held to consider the relief sought in the Declaratory and Injunctive Relief Motion. ABC's liquidity position is precarious and being closely monitored by the Federal Deposit Insurance Corporation ("FDIC"). ABC is under supervisory orders by the FDIC, and its current status is labeled by the FDIC as

² Although there remains an urgent need to have this Court resolve the issues in connection with this Motion to Shorten and the underlying pleadings filed by ABC, given that the Debtor has already filed the 2009 Tax Return, and in consideration of this Court's busy calendar, ABC seeks a hearing by March 31st to address Injunctive Relief Motion. Such a request represents an effort to strike a fair balance between ABC's need for swift and immediate action here and the appropriateness of affording parties in interest with a fair opportunity to respond to same.

“critically undercapitalized”, which is the lowest step before prudential regulators may be required to terminate a financial institution’s banking charter. Because of this, the FDIC has expressed certain concerns regarding ABC’s current liquidity and capital position.

13. ABC’s preliminary estimates, confirmed by the Debtor, indicate that the potential refund associated with the Five-Year NOL Carryback election would be approximately \$54 million, of which ABC believes it is entitled to all or a substantial portion thereof. The Debtor’s purported waiver and abandonment of the carryback of 2009 losses, if permitted to stand without the requisite notice and a hearing, purports to irrevocably and permanently waive the estate’s ability to collect the \$54 million tax refund. Consideration of the Declaratory and Injunctive Relief Motion on an emergency basis is therefore warranted in order to expeditiously consider the Debtor’s purported waiver and election, and, ultimately, to compel the Debtor to elect the Five Year NOL Carryback on the 2009 Tax Return.

14. ABC reasonably believes that such action may serve to rectify the liquidity and capital issues that it is currently experiencing.

15. In view of the foregoing, and given that the next omnibus hearing date in these cases is not scheduled to occur until next month, ABC seeks to shorten notice on the Declaratory and Injunctive Relief Motion.

A. Request for Limitation of Notice

16. The necessity of an emergency hearing to consider the Declaratory and Injunctive Relief Motion precludes ABC’s ability to provide notice in a timely manner to all parties otherwise required under the Federal and Local Rules.

17. ABC therefore respectfully requests that service of notice of the Declaratory and Injunctive Relief Motion and the instant Motion to Shorten be limited to hand delivery upon the

Debtors, the Official Committee of Unsecured Creditors, and the Office of the United States Trustee. Based on the foregoing, ABC submits that the requested relief is necessary and appropriate under the circumstances.

18. Pursuant to Local Rule 9006-1(e), the Court may rule on this Motion to Shorten without the need for a hearing, and ABC respectfully requests that the Motion to Shorten be granted without further notice or hearing.

WHEREFORE, ABC respectfully requests the entry of an Order, in the form attached hereto as Exhibit A: (i) shortening the applicable notice period with respect to the Declaratory and Injunctive Relief Motion; (ii) scheduling a hearing on the Declaratory and Injunctive Relief Motion on or before March 31, 2010, and subject to the Court's calendar; (iii) requiring any objections or other responses to be filed and served on counsel to the movant by 4:00 p.m. on the day prior to the hearing; and (iv) granting such other and further relief as the Court deems just and proper.

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Dated: March 19, 2010
Wilmington, DE

PEPPER HAMILTON LLP

/s/ Michael J. Custer

Michael J. Custer (DE No. 4843)
Hercules Plaza, Suite 5100
1313 North Market Street, P.O. Box 1709
Wilmington, Delaware 19899-1709
Telephone: (302) 777-6500
Facsimile: (302)421-8390
Email: cuserm@pepperlaw.com

and

Leon R. Barson
Bonnie MacDougal Kistler
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2799
Telephone: (215) 981-4000
Facsimile: (215) 981-4750
Email: barsonl@pepperlaw.com
kistlerb@pepperlaw.com

Counsel to Advanta Bank Corp.

EXHIBIT A

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

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In re: : Chapter 11
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ADVANTA CORP., *et al.*,³ : Case No. 09-13931 (KJC)
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Debtors. : (Jointly Administered)
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-----X
Advanta Bank Corp., :
Plaintiff, :
v. : Adv. Proc. No.10-50795 (KJC)
Advanta Corp., :
Defendant. :
:
Related Docket No. 9
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**ORDER GRANTING MOTION FOR SHORTENED NOTICE AND AN EXPEDITED
HEARING ON THE EMERGENCY MOTION OF PLAINTIFF ADVANTA
BANK CORP. FOR DECLARATORY AND INJUNCTIVE RELIEF
IN CONNECTION WITH ITS AMENDED COMPLAINT**

UPON THE MOTION (the “Motion to Shorten”) of Advanta Bank Corp.
 (“ABC”) for the entry of an Order Shortening Notice and Scheduling an Expedited Hearing on
the Emergency Motion of Advanta Bank Corp. for Declaratory and Injunctive Relief In

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Connection with its Amended Complaint (the “Declaratory and Injunctive Relief Motion”), and having given due consideration to the Motion to Shorten, and this Court possessing jurisdiction to consider the Motion to Shorten, and venue lying appropriately with this Court, and notice of the Motion to Shorten being sufficient under the circumstances, and the relief requested by the Motion to Shorten being just and proper, IT IS HEREBY ORDERED THAT:

1. The Motion to Shorten is GRANTED.
2. This Court will hold a hearing to consider the Declaratory and Injunctive Relief Motion and any response or objections thereto on March ____, 2010, at ____:____.m at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom #5, Wilmington, DE 19801.
3. Any responses or objections to the Declaratory and Injunctive Relief Motion shall be filed and served on counsel to the movant on or before March ____, 2010 at 4:00 pm (ET).
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2010
Wilmington, Delaware

HONORABLE KEVIN J. CAREY, CHIEF JUDGE
UNITED STATES BANKRUPTCY JUDGE