

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

ADVANTA CORP., *et al.*,

Debtors.

Chapter 11

Case Nos. 09-13931 (KJC), *et seq.*
(jointly administered)

ADVANTA BANK CORP.,

Plaintiff,

v.

ADVANTA CORP.,

Defendant.

Adversary Proc. No. 10-50795-KJC

**MOTION OF THE FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF ADVANTA BANK CORP., SEEKING A
DECLARATION THAT THE AUTOMATIC STAY DOES NOT APPLY OR, IN THE
ALTERNATIVE, AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

The Federal Deposit Insurance Corporation, as receiver of Advanta Bank Corp. (“FDIC-R”), by and through its undersigned counsel, hereby files this Motion Seeking A Declaration That The Automatic Stay Does Not Apply Or, In The Alternative, An Order

Granting Relief From The Automatic Stay (the “Motion”)¹ in the above-captioned adversary proceeding. In support hereof, FDIC-R has filed its Opening Brief In Support of Motion of The Federal Deposit Insurance Corporation, as Receiver of Advanta Bank Corp. Seeking A Declaration That The Automatic Stay Does Not Apply Or, In The Alternative, An Order Granting Relief From The Automatic Stay (the “Opening Brief”) concurrently herewith and which is fully incorporated herein by reference.²

WHEREFORE, for the reasons set forth in its briefs, FDIC-R respectfully requests that this Court enter an Order declaring that the automatic stay does not apply to the FDIC-R’s exercise of the Tax Rights or, in the alternative, enter an Order (i) lifting the automatic stay so that the FDIC-R as fiduciary of ABC may exercise the Tax Rights by filing FDIC-R Returns for the 2008 and 2009 taxable years of the Consolidated Group, and any amendments to prior year’s

¹ The submission of this Motion or the Opening Brief shall not in any way constitute a submission by the FDIC-R to the jurisdiction or authority of the Bankruptcy Court for the resolution of any regulatory matter involving the FDIC-R. Nor is this Motion or the Opening Brief an admission that this Court is the appropriate forum for disputes involving the FDIC-R. The filing of this Motion or the Opening Brief shall not constitute a waiver or consent by the FDIC-R of any: (a) right to sovereign immunity, where the FDIC-R is acting in its capacity as Receiver; (b) right to have any and all final orders in any and all non-core matters entered only after de novo review by a United States District Court Judge; (c) right to trial by jury in any proceeding as to any and all matters so triable therein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related thereto, whether or not such jury trial right is pursuant to statute or the United States Constitution; (d) right to have the reference of this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal; or (e) other rights, claims, actions, defenses, setoffs, recoupments or other matters to which the FDIC-R is entitled under any agreements or at law or in equity or under the United States Constitution. All of the foregoing rights are expressly reserved and preserved, without exception, and without the intention or purpose of conceding jurisdiction in any way by this filing or by any other participation in this matter or in this case. The FDIC-R expressly reserves all rights at law and equity to assert the preemption of the Bankruptcy Court’s jurisdiction and the exclusive jurisdiction provided under Title 12, as applicable, with respect to the FDIC-R.

² All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Opening Brief.

returns as may be permitted under law and, (ii) granting such other and further relief as this Court may deem just and proper.

Dated: May 14, 2010
Wilmington, Delaware

Respectfully submitted,

PINCKNEY, HARRIS & WEIDINGER, LLC

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re ADVANTA CORP., <i>et al.</i> , Debtors.	Chapter 11 Case Nos. 09-13931 (KJC), <i>et seq.</i> (jointly administered)
ADVANTA BANK CORP., Plaintiff, v. ADVANTA CORP., Defendant.	Adversary Proc. No. 10-50795-KJC

ORDER GRANTING THE MOTION OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF ADVANTA BANK CORP., SEEKING A DECLARATION THAT THE AUTOMATIC STAY DOES NOT APPLY OR, IN THE ALTERNATIVE, AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY
(relates to Docket Nos. ____)

UPON CONSIDERATION OF the Motion Seeking A Declaration That The Automatic Stay Does Not Apply Or, In The Alternative, An Order Granting Relief From The Automatic Stay (the “Motion”) and all briefs in support of the Motion, filed by Federal Deposit Insurance Corporation (the “FDIC”) as Receiver (“FDIC-R”) of Advanta Bank Corp. (“ABC”), seeking entry of an order declaring the automatic stay imposed by Section 362(a) of title 11 of the United States Code, does not apply or, alternatively, lifting the stay so that the FDIC-R may exercise certain of its rights pursuant to Section 1821(e) of title 12 of the United States Code; and any responses thereto; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion having been provided to the parties as set forth in the Certificate of Service filed by the

FDIC-R, and it appearing that no other or further notice need to be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the debtors' estate, creditors, and all parties in interest; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is ORDERED:

1. The relief sought in the Motion is GRANTED. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the opening brief in support of the Motion.

2. The automatic stay as provided in 11 U.S.C. § 362 is deemed not to apply to the FDIC-R's exercise of its rights, as a fiduciary of ABC, under Section 6402(k) of the Internal Revenue Code and Treas. Reg. § 310.6402-7 to file a consolidated return with respect to the 2008 and 2009 taxable years of the affiliated group of which ABC is a consolidated subsidiary, make certain elections with respect to the carryback of consolidated net operating losses attributable to ABC and its wholly-owned subsidiary Advanta Banking Receivable Corporation in those taxable years, and claim a refund of taxes with respect to those taxable years (collectively the "FDIC-R Returns").

3. Even if the automatic stay could be deemed to apply, the Court hereby determines that the automatic stay should be lifted and does not bar the FDIC-R from filing the FDIC-R Returns.

4. If, as a result of the FDIC-R's filing of the FDIC-R Returns, the IRS pays a refund to the FDIC-R or any other party, that party shall deposit the refund proceeds into an escrow account until ownership of those proceeds is determined.

Dated: _____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2010, I caused copies of the foregoing Motion of The Federal Deposit Insurance Corporation, as Receiver of Advanta Bank Corp. Seeking A Declaration That The Automatic Stay Does Not Apply Or, In The Alternative, An Order Granting Relief From The Automatic Stay to be served via first-class mail, postage prepaid, upon the parties listed on the attached matrix.

Dated: May 14, 2010
Wilmington, Delaware

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