

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

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In re: : Chapter 11
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
 : (Jointly Administered)
Debtors. :
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ADVANTA BANK CORP., : Adversary Proceeding
 : No.: 10-50795 (KJC)
Plaintiff, :
-against- : **RE: D.I. 89**
ADVANTA CORP., : **Hearing Date: Aug. 16, 2010 at 10:00 a.m.**
 :
Defendant.
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**ADVANTA’S JOINDER TO THE PRE-TRIAL BRIEF
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Advanta Corp. (“*Advanta*”), as debtor and debtor in possession in the above-referenced jointly administered chapter 11 cases, respectfully submits this joinder (the “*Joinder*”) in support of the Pre-Trial Brief of the Official Committee of Unsecured Creditors (the “*Brief*”), dated August 13, 2010, and respectfully states as follows:

Joinder

1. Advanta joins in the Brief, adopts the legal arguments and assertions set forth therein, and respectfully submits that the relief sought by the FDIC,¹ acting as receiver for ABC, should be denied for the reasons, and based on the authorities, set forth in the Brief and in

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Joint Pre-Evidentiary Hearing Memorandum, dated August 13, 2010, and filed contemporaneously herewith.

the extensive pleadings filed by Advanta and the Creditors' Committee in opposition to the Injunction Motion and Lift Stay Motion (together, the "*Pending Motions*").

2. Furthermore, to the extent that the FDIC intends to assert at the Evidentiary Hearing that certain of Advanta's directors (i) owed a fiduciary duty to ABC at the time Advanta's Board of Directors (the "*Board*") passed resolutions authorizing the Tax Elections (the "*Resolutions*") and/or (ii) by authorizing the Tax Elections breached fiduciary duties to ABC, such arguments have no merit. Advanta's Board owes fiduciary duties to Advanta when acting on Advanta's behalf, as the Board was when it passed the Resolutions. *See Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280 (Del. 1989) ("In discharging [their management] function, directors owe fiduciary duties of care and loyalty to the corporation and its shareholders."). Accordingly, Advanta's Board could not have breached any fiduciary duties to ABC when it passed the Resolutions, as the Board's duties ran entirely to Advanta in that capacity.

3. Moreover, any argument that the FDIC may make that Advanta had fiduciary duties to ABC because Advanta's directors sit on the board of ABC must fail. No officers or directors of Advanta were officers or directors of ABC after November 13, 2009, when Dennis Alter, William Rosoff, and Philip Browne resigned as directors and officers of ABC at the insistence of the FDIC.

Reservation of Rights

4. Advanta reserves its right to assert other and further arguments in favor of the Brief and to supplement this Joinder, if necessary.

WHEREFORE Advanta respectfully requests that the Court deny the relief requested by the FDIC in the Amended Complaint and the Pending Motions and grant such other further relief as it deems just and proper.

Dated: August 13, 2010
Wilmington, Delaware

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