

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

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In re	:	Chapter 11
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
Debtors. <sup>1</sup>	:	(Jointly Administered)
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ADVANTA BANK CORP.,	:	
Plaintiff,	:	
v.	:	
ADVANTA CORP.,	:	Adv. Proc. No. 10-50795 (KJC)
Defendant.	:	<b>Hearing Date: TBD</b>
-----	X	<b>Objection Deadline: TBD</b>

**MOTION FOR AN ORDER APPROVING THE SETTLEMENT AGREEMENT  
BETWEEN ADVANTA CORP., THE FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR ADVANTA BANK CORP.,  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

<sup>1</sup> The Debtors in these jointly administered chapter 11 cases (the “*Chapter 11 Cases*”), along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070) (“*Advanta*”), 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), BE 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). Information regarding the Debtors’ businesses and the background relating to events leading up to these chapter 11 cases can be found in (i) the Declaration of William A. Rosoff in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions, filed on November 8, 2009, (the “*Rosoff Declaration*”), the date the majority of Debtors filed their petitions (the “*Commencement Date*”) under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and (ii) that certain supplement thereto, filed on November 20, 2009, the date Advanta Ventures Inc., BE Corp., ideablob Corp. and Advanta Credit Card Receivables Corp. filed their chapter 11 cases (the “*Second Commencement Date*”, and together with the Commencement Date, the “*Commencement Dates*”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

Advanta, the above-captioned debtor and debtor-in-possession and defendant in the above-referenced adversary proceeding (the “*Tax Litigation*”), hereby requests entry of an order, pursuant to section 105(a) of title 11 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules, approving the terms of the Settlement Agreement by and between Advanta, the Federal Deposit Insurance Corporation (the “*FDIC*”), as receiver for Advanta Bank Corp. (“*ABC*”), and the official committee of unsecured creditors appointed in these Chapter 11 Cases (the “*Creditors’ Committee*,” and each of Advanta, the FDIC, and the Creditors’ Committee a “*Party*” and collectively the “*Parties*”), which resolves, among other things, the Tax Litigation and certain proofs of claim filed by the Parties. In support of this motion (the “*Motion*”), Advanta respectfully represents as follows:

#### **Jurisdiction**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (B). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

#### **Background**

2. Advanta is the common parent of an affiliated group of corporations, including ABC, that have filed consolidated U.S. federal income tax returns (the “*Affiliated Group*”). Advanta and the Affiliated Group are parties to that certain Tax Sharing Agreement, the applicable version of which is dated as of May 1, 1995 (the “*TSA*”), which applies to U.S. federal and state income tax returns that Advanta files on behalf of the Affiliated Group.

3. On March 14, 2010, Advanta filed a 2009 consolidated federal income tax return (the “**2009 Consolidated Return**”) for the Affiliated Group. In the 2009 Consolidated Return, Advanta elected to waive the carryback of any of the Affiliated Group’s net operating loss (“**NOL**”) for the 2009 taxable year, thus resulting in the carryforward of the full 2009 NOL (the “**2009 Tax Election**”). The same day, Advanta filed an amended 2008 consolidated federal income tax return for the Affiliated Group (the “**Amended 2008 Consolidated Return**”) electing to carry back five years the Affiliated Group’s 2008 NOL (the “**2008 Tax Election**”, and together with the 2009 Tax Election, the “**Tax Elections**”).

4. ABC initiated the Tax Litigation on March 14, 2010, by seeking to compel Advanta to request an extension of time to file the 2009 Consolidated Return, or, in the alternative, elect to carry back the 2009 NOL five years (the “**Five-Year Carryback**”). (See A.P. D.I. 1.) On March 19, 2010, ABC amended its complaint and filed the Emergency Motion of ABC for Declaratory and Injunctive Relief in Connection With its Amended Complaint against Advanta Corp. (the “**Injunction Motion**”) in which ABC instead sought, among other things, to have the Tax Elections declared void *ab initio*. (See A.P. D.I. 8, 9.)

5. On March 19, 2010, the Utah Department of Financial Institutions closed ABC, and the FDIC was appointed as receiver of ABC. On May 14, 2010, the FDIC filed 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 “**Lift Stay Motion**,” and with the Injunction Motion, the “**Pending Motions**”), requesting to lift the automatic stay, to the extent applicable, to permit the FDIC to file competing consolidated U.S. federal income tax returns on behalf of the Affiliated Group with respect to the 2008 and 2009 taxable years and make the Five-Year Carryback (the “**FDIC Returns**”). (See A.P. D.I. 25.)

6. On May 14, 2010, the FDIC filed proofs of claim against one or more of the Debtors in the Chapter 11 Cases, asserting claims in excess of \$200 million, a portion of which the FDIC further asserted is entitled to superpriority or priority status (*see* Claim Nos. 2335 and 2336; collectively, the “***FDIC Proofs of Claim***”).

7. On June 22, 2010, the Debtors filed a proof of claim against ABC in the FDIC receivership asserting claims against ABC in the aggregate amount of at least \$19 million (the “***Advanta Proof of Claim***,” and together with the FDIC Proofs of Claim, the “***Proofs of Claim***”).

8. The Court scheduled an evidentiary hearing with respect to the Pending Motions for August 16-18, 2010, and set an expedited schedule for discovery in connection with the Pending Motions. (*See Expedited Discovery and Evidentiary Hearing Scheduling Order*, A.P. D.I. 54; *Amended Expedited Discovery and Evidentiary Hearing Scheduling Order*, A.P. D.I. 74.) Thereafter, Advanta, the FDIC, and the Creditors’ Committee engaged in discovery regarding the disputed issues underlying the Tax Litigation.

9. Prior to the scheduled evidentiary hearing, the Court referred the Parties to mediation. (*See Order Confirming Parties’ Selection of Mediator Concerning Tax Election and Stay Disputes* [A.P. D.I. 70], dated July 30, 2010 (the “***Mediation Order***”).) Pursuant to the Mediation Order, the Parties participated in mediation (“***Mediation***”) before the Honorable Robert Drain on August 10, 2010, with the goal of attempting to resolve the disputes underlying the Tax Litigation. The disputes included but were not limited to those arising from or relating to the filing of the 2009 Consolidated Return and the Amended 2008 Consolidated Return, the Tax Elections, and the interpretation of the TSA.

10. Although Judge Drain provided substantial assistance in moving the Parties forward in their settlement discussions, the Parties did not reach an agreement during the Mediation. However, as a result of continued arm's-length negotiations, on August 13, 2010, the Parties were able to reach agreement on the essential terms of a global settlement of the Tax Litigation and the Proofs of Claim. The principle terms of the settlement were read into the record of the August 16, 2010 hearing held before this Court.

11. The Parties thereafter negotiated and agreed to the Settlement Agreement attached hereto as *Exhibit A* (the "*Settlement Agreement*"). As set forth in the Settlement Agreement, the Parties have agreed to fully and finally resolve the Tax Litigation and the Proofs of Claim with prejudice, subject to the approval of the Bankruptcy Court. The salient terms of the Settlement Agreement are as follows<sup>2</sup>:

- **Lifting of the Automatic Stay:** On the later of (i) this Court's entry of an order approving the Settlement Agreement and authorizing the Debtors' execution thereof, or (ii) the date the FDIC delivers to Advanta and the Creditors' Committee a written representation (the "*FDIC Representation*") that it has all the necessary consents and authority to consummate the Settlement Agreement on the terms set forth therein (the "*Effective Date*") (*see* Ex. A ¶ 4), the automatic stay, to the extent applicable, shall be lifted to permit the FDIC to file the FDIC Returns, subject to the FDIC's prior consultation with Advanta and the Creditors' Committee regarding the form and substance of the FDIC Returns and the process of their filing. If the FDIC Representation is made and the FDIC Returns are filed in form and substance and by process satisfactory to Advanta and the Creditors' Committee, Advanta will support and provide reasonable assistance to the FDIC in connection with the filing of the FDIC Returns; *provided, however*, that the Settlement Agreement shall not require Advanta or the Creditors' Committee to agree that the filing of the 2009 Consolidated Return and the Amended 2008 Consolidated Return, and the elections and waivers made as part thereof, were not authorized actions under the Bankruptcy Code. (*See id.* ¶ 5(a).)

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<sup>2</sup> The following is a summary of the Settlement Agreement, which is attached hereto and incorporated by reference as if fully set forth herein. In the event of any inconsistency between this summary and the Settlement Agreement, the Settlement Agreement controls.

- **Sharing of Refund:** If the FDIC Returns are filed and the Internal Revenue Service (“*IRS*”) pays any refund in connection with any carryback of the 2009 NOL for the Affiliated Group (the “*Refund*”), ABC shall receive 90% of the Refund and Advanta shall receive 10% of the Refund. (*See id.* ¶ 5(b).)
- **Treatment of the FDIC Proofs of Claim:** On the Effective Date, and without any further order of the Court, (i) Claim No. 2335 shall be deemed withdrawn with prejudice and (ii) Claim No. 2336 shall be reduced and modified to a contingent general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 (the “*Contingent Claim*”); *provided, however*, that such reduction in Claim No. 2336 shall not constitute a release of any claims the ABC Parties (as defined below) may have against any party other than the Debtors. (*See id.* ¶¶ 5(c)(i), 5(c)(ii).) In the event the IRS pays the Refund, upon payment of such Refund, the Contingent Claim shall be deemed withdrawn with prejudice without any further order of the Court. (*Id.* ¶ 5(c)(iii).) Upon a Final Determination (as defined in the Settlement Agreement) that the Refund will not be paid, the Contingent Claim shall become an allowed general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 and shall receive the treatment provided to other allowed general unsecured claims against Advanta pursuant to the terms of any confirmed chapter 11 plan. (*Id.* ¶ 5(c)(iv).) The FDIC agrees, and agrees to cause ABC, any of ABC’s wholly-owned subsidiaries, and all successors, assigns, heirs and any other persons or entities that claim or might claim through, on behalf of, or for the benefit of any of the foregoing (collectively with the FDIC, the “*ABC Parties*”), not to assert or reassert any claims asserted in the FDIC Proofs of Claim that are released under the Settlement Agreement against any of the Parties released thereunder. (*See id.* ¶¶ 5(c)(ii).)
- **Treatment of the Advanta Proof of Claim:** On the Effective Date, the Advanta Proof of Claim shall be deemed withdrawn with prejudice. (*See id.* ¶ 5(d).) The Advanta Parties agree not to assert or reassert any claims asserted in the Advanta Proof of Claim against any of the ABC Parties. (*See id.*)
- **Release of Advanta Parties:** On the Effective Date, subject to Section 5(f) of the Settlement Agreement, the ABC Parties shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged (i) the Debtors, each of the Debtors’ estates, each of the Debtors’ non-debtor affiliates who are not ABC Parties, each of their present and former employees other than (x) officers or directors (who are only being released by the ABC Parties to the extent provided in Sections 5(f) and 5(i) of the Settlement Agreement) and (y) dual employees of both ABC and Advanta, but solely in their capacity

as ABC employees, *provided, however*, that no employee shall be released from any liability as a recipient of a fraudulent transfer or any other avoidable transfer recoverable by the ABC Parties, except as arising from the filing of the Tax Returns or the making of the Tax Elections, (ii) the Creditors' Committee, the members of the Creditors' Committee and such members' respective employees, officers, directors, managers, members and equityholders, and (iii) the respective counsel, advisors, successors and assigns of any of the foregoing (collectively, the "**Advanta Parties**") from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of the Settlement Agreement against the Advanta Parties or any of them; *provided, however*, that the foregoing shall not and is not intended to release the Advanta Parties from the performance of their obligations in accordance with the Settlement Agreement. (*See id.* ¶¶ 5(e).)

- **Limited Release of Advanta D&Os:** On the Effective Date, the ABC Parties shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the Debtors' present and former directors and officers (collectively, the "**Advanta D&Os**") solely from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os or any of them arising from the filing of the Tax Returns or the making of the Tax Elections (collectively, the "**Advanta D&O Released Claims**"). (*Id.* ¶ 5(f).)
- **Release of ABC Parties:** On the Effective Date, the Debtors, each of the Debtors' estates, and each of the Debtors' non-debtor affiliates who are not ABC Parties (collectively, the "**Debtor Parties**") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the ABC Parties from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the Debtor Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of the Settlement Agreement against the ABC Parties or any of them (collectively, the "**FDIC Released Claims**"); *provided, however*, that

the foregoing shall not and is not intended to release the ABC Parties from the performance of their obligations in accordance with the Settlement Agreement.. (*Id.* ¶¶ 5(g).)

- **Limitation on Releases:** Neither the Advanta Released Claims nor the FDIC Released Claims shall include claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action arising in whole after the execution of the Settlement Agreement, including, without limitation, any claims or causes of action arising from actions or failures to take action in respect of servicing or paying for the servicing of credit card receivables owned by any Debtor Party. The following shall not constitute a settlement credit in whole or in part, cap, bar, or defense in any respect, whether in law or in equity, based upon principles or defenses such as *res judicata*, collateral estoppel, and the like, to the Advanta D&Os in response to the Advanta D&O Reserved Claims (as defined below), or to any former or current attorney, accountant, appraiser, or employee of the ABC Parties: the Settlement Agreement or performance thereunder including (i) the reduction and modification of Claim No. 2336 to the Contingent Claim; (ii) the Refund, if paid by the IRS; (iii) the Allowed Claim; (iv) the releases contained in the Settlement Agreement; or (v) the receipt or prospective receipt by the ABC Parties of any payment or distribution pursuant to this Agreement or the Allowed Claim. Despite the foregoing, if any court or arbitrator should determine that a settlement credit should be granted to any person or entity as a result of the Settlement Agreement, then the Parties agree that the allocation of the settlement proceeds received by the ABC Parties pursuant to this Agreement is 99% of the settlement proceeds are paid in settlement of the “Tax Related Entitlements” claims set forth in FDIC POC 2336 and 1% of the settlement proceeds are paid in settlement of all other claims of the ABC Parties released hereunder. In addition, other than as expressly provided for in Sections 5(f) and 5(i) of the Settlement Agreement, the ABC Parties reserve and do not waive, release, acquit or discharge any other claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os (the “*Advanta D&O Reserved Claims*”) or against any former or current attorney, accountant, appraiser, or employee of the ABC Parties. (*Id.* ¶¶ 5(h).)
- **TSA:** On the Effective Date, the ABC Parties shall be deemed no longer to be parties to the TSA and none of the ABC Parties, on the one hand, or the Debtor Parties and Advanta D&Os, on the other hand, shall have any claims against each other under or arising from the TSA (other than the rights to the Refund and the Contingent Claim as expressly provided in the



Settlement Agreement); *provided, however*, that nothing in the Settlement Agreement shall affect any rights or claims of the Debtor Parties with respect to each other under the TSA or constitute an assumption or rejection of the TSA nor shall the Settlement Agreement affect any rights or claims of the ABC Parties against the Advanta D&Os under or arising from the TSA prior to the Effective Date that are not related to the Advanta D&O Released Claims or the alleged damages underlying such claims. (*Id.* ¶¶ 5(i).)

- **Dismissal of Tax Litigation and Withdrawal of Pending Motions:** On the Effective Date, any and all claims for relief sought in the Tax Litigation by any of the Parties shall be deemed withdrawn and dismissed. Within three (3) business days after the Effective Date, the FDIC shall file a notice of dismissal with prejudice of the Tax Litigation and withdrawal with prejudice of the Pending Motions. (*Id.* ¶ 5(k).)
- **Representation and Warranties:** Each Party unconditionally represents and warrants that: (a) it has been advised to consult with an attorney regarding the terms of the Settlement Agreement; (b) the Settlement Agreement has been reviewed by such Party and its counsel; (c) it has consulted with, or has had sufficient opportunity to consult with, its own counsel or other advisors regarding the terms of the Settlement Agreement; (d) it has relied solely on its own judgment and that of its attorneys, advisors, and representatives regarding the consideration for, and the terms of, the Settlement Agreement; (e) any and all questions regarding the terms of the Settlement Agreement have been asked and answered to its complete satisfaction; (f) it has read the Settlement Agreement and fully understands its terms and their import; (g) the consideration provided for herein is good and valuable; (h) it is entering into the Settlement Agreement voluntarily, of its own free will, and without any duress, coercion, or undue influence exerted by or on behalf of any other Party or any other person or entity; (i) it is the lawful owner of the claims and the potential claims it is releasing in the Settlement Agreement; (j) it has full capacity and authority to settle, compromise, and release its claims and potential claims and to enter into the Settlement Agreement; *provided, however*, that in the case of the FDIC, said shall be true as of the time of its delivery of the FDIC Representation; (k) no other person or entity has acquired or has been assigned, or will in the future acquire or have any right to assert, against another Party any portion of the claims or potential claims it has released in the Settlement Agreement; (l) it knows of no other person or entity that intends to assert a claim released in the Settlement Agreement by, through, under, or on behalf of it; and (m) the individual executing the Settlement Agreement on behalf of such Party is duly authorized to enter into and deliver the Settlement Agreement and, subject to the Debtors obtaining the Court's approval and the FDIC delivering the FDIC Representation, has obtained all necessary institutional, corporate, and governmental consents and approvals to bind

such Party hereto and consummate the terms of the Settlement Agreement. The foregoing representations and warranties survive the execution of the Settlement Agreement.

- **Termination:** The Settlement Agreement may be terminated upon written notice by any Party to the other Parties if the FDIC does not deliver the FDIC Representation to Advanta and the Creditors' Committee by September 30, 2010. (*Id.* ¶ 7(a).) The Settlement Agreement shall be null and void if not approved by this Court by the later of the date of delivery of the FDIC Representation or September 15, 2010. (*Id.* ¶ 7(b).) In the event the Settlement Agreement is terminated pursuant to Section 7(a) thereof, (i) any Party may make a written request to this Court that the Tax Litigation be reset for an evidentiary hearing; (ii) in such restored adversary proceeding or otherwise, neither the FDIC nor ABC shall make any argument, claim or assertion with respect to the fact that the FDIC Returns have not been filed or that they have not been filed by any particular date, and the Parties otherwise agree that, except as provided in sub-section (iii) below, none of the Parties shall be prejudiced by the existence or terms of this Agreement or the termination thereof; and (iii) neither the FDIC nor ABC shall, until thirty (30) days after this Court's final order adjudicating the merits of the FDIC's claims (if any) in respect of the TSA (including resolution of any subsequent appeals or expiration of any period for filing appeals has lapsed without the filing of any appeal or motion to stay), (I) file the FDIC Returns without seeking to lift the automatic stay, (II) seek to lift the automatic stay to file the FDIC Returns, or (III) seek authorization in any other forum to effectuate the filing of the FDIC Returns. (*Id.* ¶7(c).)
- **Entire Agreement:** The Settlement Agreement constitutes the full and entire agreement among the Parties with regard to the subject thereof, and supersedes all prior negotiations, representations, statements on the record, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter thereof other than representations and statements on the record made by the FDIC prior to the date thereof with regard to its authority to enter into the Settlement Agreement or agree to the principles for resolving the Pending Motions, the Adversary Proceeding, and the Proofs of Claim, which principles were read into the record of the August 16, 2010 hearing held before the Court.

### **Relief Requested**

12. By this Motion, Advanta seeks an order, substantially in the form annexed hereto as *Exhibit B*, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a), (i) approving the Settlement Agreement, (ii) lifting the automatic stay upon the

Effective Date of the Settlement Agreement (as defined therein) to allow the FDIC to file the FDIC Returns, and (iii) disallowing and expunging with prejudice or modifying, as set forth in the Settlement Agreement, the FDIC Proofs of Claim.

**Approval of the Settlement Agreement Is Appropriate and Warranted Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019**

13. Bankruptcy Code section 105(a) provides that, “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019, which governs the approval of compromises and settlements, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (citation omitted).

14. A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises are favored in bankruptcy.’” (quoting 9 COLLIER ON BANKRUPTCY ¶ 9019.03[1] (15th ed. 1993))); *In re Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del. 2004) (“Compromises are generally favored in bankruptcy.”). As the United States District Court for the District of Delaware has explained, to approve a settlement, a bankruptcy court must determine that the proposed settlement is fair and reasonable and in the best interests of the debtor’s estate and its creditors. *See In re Marvel Entm’t Group, Inc.*, 222 B.R. 243, 250 (D. Del. 1998) (finding that the terms of a settlement agreement were “fair and reasonable”, and settlement did “not unfairly impact unsecured creditors” and was “in the best interests of the estate” (quoting *In re Louise’s Inc.*, 211 B.R. 798, 801 (D. Del. 1997)

(“the Court . . . must determine if the compromise is fair, reasonable, and in the interest of the estate.”)). A court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness. . . .’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)); accord *In re Key3Media Group, Inc.*, 336 B.R. 87, 92-93 (Bankr. D. Del. 2005); see also *In re World Health Alternatives, Inc.*, 344 B.R. at 296.

15. In determining whether a settlement is within the range of reasonableness, a court should consider four principal factors: (1) the probability of success in litigation; (2) the likely difficulties in collection;<sup>3</sup> (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Fry’s Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (citing *In re Martin*, 91 F.3d at 393); *In re Etoys, Inc.*, 331 B.R. 176, 198 (Bankr. D. Del. 2005); *In re Coram Healthcare Corp.*, 315 B.R. at 330. These factors seek to balance the probable benefits and potential costs of pursuing a claim or defense against the benefits and costs of the proposed settlement. See *In re Martin*, 91 F.3d at 393 (“The particular process of bankruptcy court approval [of a proposed settlement] requires a bankruptcy judge to assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.”).

16. Unless it falls below “the lowest point in the range of reasonableness,” a settlement generally should be approved. *In re Coram Healthcare Corp.*, 315 B.R. at 330

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<sup>3</sup> Because Advanta is a defendant in the Tax Litigation, rather than a plaintiff, the second factor does not weigh in the analysis of the reasonableness of the Settlement Agreement.

(quoting *Official Unsecured Creditors' Comm. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.)*, 150 B.R. 595, 598 (E.D. Pa. 1992)).

17. Advanta submits that, in light of the above-referenced factors, the Settlement Agreement is fair and reasonable, and in the best interests of Advanta's estate and its creditors. First, many of the issues that will be resolved pursuant to the Settlement Agreement involve significant factual questions and/or legal interpretation issues, which present litigation risks and uncertainty of success. After considering the inherent uncertainty, risks, delays, and expense associated with the full litigation of the Pending Motions and the complex issues underlying the Tax Litigation and Proofs of Claim, Advanta, in consultation with its advisors, determined that the potential benefits of continued litigation do not outweigh the benefits achieved by resolving these issues through settlement at this time.

18. Second, in exchange for a substantial portion of the potential refund ABC may receive as a result of filing the FDIC Returns, the FDIC has agreed (i) upon the Effective Date, to have one FDIC Proof of Claim deemed withdrawn with prejudice, and another FDIC Proof of Claim modified to be a contingent general unsecured claim at a substantially reduced amount (or, deemed withdrawn with prejudice, if the IRS pays a Refund), and (ii) within three (3) business days after the Effective Date, to withdraw with prejudice the Pending Motions and dismiss with prejudice the Tax Litigation. (*See* Ex. A ¶¶ 5(a)-(d), 5(k).) The Settlement Agreement thus resolves hundreds of millions of dollars in alleged claims asserted against the Debtors' estates. In addition, the Parties have agreed to exchange valuable releases (*see id.* ¶¶ 5(e)-(h)) for the purpose of fully and finally resolving the Tax Litigation and the Proofs of Claim. The withdrawal of these claims and the waivers and releases inure to the benefit of Advanta's estate and its creditors. Moreover, the Creditors' Committee, which is the fiduciary of

unsecured creditors in these Chapter 11 Cases, formally intervened in the Tax Litigation, participated in the negotiation of the terms of the global settlement, and is a party to the Settlement Agreement. The Creditors' Committee's support of the Settlement Agreement provides further evidence that the Settlement Agreement is in the interest of creditors of Advanta's estate.

19. Finally, the Settlement Agreement represents the culmination of substantial arms'-length negotiation between the Parties regarding the Tax Litigation, including extended negotiations during and subsequent to Mediation. It is Advanta's business judgment that entering into the Settlement Agreement is in the best interests of its estate and creditors.

20. For the foregoing reasons, Advanta submits that the Settlement Agreement should be approved.

#### **Notice**

21. Notice of this Motion shall be provided via hand delivery, overnight mail and/or first class mail to: (a) counsel to the FDIC; (b) counsel to the Creditors' Committee; (c) the Office of the United States Trustee for the District of Delaware; and (d) all parties entitled to receive notice in the Bankruptcy Case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, Advanta submits that no other or further notice is required.

#### **No Prior Request**

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

WHEREFORE, Advanta respectfully requests that the Court enter an order, substantially in the form attached hereto as *Exhibit B*, (i) approving the Settlement Agreement, (ii) lifting the automatic stay on the Effective Date of the Settlement Agreement to allow the FDIC to file the FDIC Returns, and (iii) subject to occurrence of the Effective Date of the

Settlement Agreement, disallowing and expunging with prejudice or modifying, as set forth in the Settlement Agreement, the FDIC Proofs of Claim, and granting such other and further relief as the Court may deem just and proper.

Dated: August 27, 2010  
Wilmington, Delaware

/s/ Zachary I. Shapiro

Mark D. Collins (No. 2981)  
Paul N. Heath (No. 3704)  
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- and -

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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

# **EXHIBIT A**

## **Settlement Agreement**



## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the “*Agreement*”) is dated as of August 27, 2010, by and between Advanta Corp. (“*Advanta*”) and its debtor affiliates, as debtors and debtors in possession (the “*Debtors*”), the Creditors’ Committee (as defined below), and the Federal Deposit Insurance Corporation (the “*FDIC*”), on behalf of itself and Advanta Bank Corp. (“*ABC*”), for which it is the receiver pursuant to 12 U.S.C. § 1821(c). The signatories hereto are referred to hereinafter collectively as the “*Parties*” or individually as a “*Party*”.

**RECITALS**

A. On November 8, 2009, Advanta and certain of the Debtors filed their petitions under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and other Debtors filed petitions under chapter 11 of the Bankruptcy Code on November 20, 2009. The Debtors’ chapter 11 cases (the “*Chapter 11 Cases*”) are being jointly administered under Case No. 09-13931 (KJC) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

B. On November 24, 2009, the official committee of unsecured creditors (the “*Creditors’ Committee*”) was appointed in the Chapter 11 Cases.

C. Advanta is the common parent of an affiliated group of corporations, including ABC, that has filed consolidated returns for federal income tax purposes (collectively, the “*Affiliated Group*”). Advanta and the Affiliated Group are parties to a Tax Sharing Agreement, the applicable version of which (as amended) is dated as of May 1, 1995 (the “*TSA*”). The TSA applies to Advanta’s filing of both federal and state tax returns on behalf of the Affiliated Group and the tax sharing obligations amongst the members of the Affiliated Group.

D. On March 14, 2010, Advanta filed with the Internal Revenue Service (the “*IRS*”) a 2009 consolidated federal income tax return for the Affiliated Group (the “*2009 Consolidated Return*”), in which it elected to waive any net operating loss (“*NOL*”) carryback with respect to the Affiliated Group’s 2009 NOL, thus resulting in the carryforward of the full 2009 NOL (the “*2009 Tax Election*”).

E. Also on March 14, 2010, Advanta filed with the IRS an amended 2008 consolidated federal income tax return for the Affiliated Group (the “*Amended 2008 Consolidated Return*”), and together with the 2009 Consolidated Return, the “*Tax Returns*”) electing to carry back the Affiliated Group’s 2008 NOL five years (the “*2008 Tax Election*”), and together with the 2009 Tax Election, the “*Tax Elections*”).

F. On March 14, 2010, ABC filed a complaint against Advanta thereby initiating an adversary proceeding, which was assigned Case No. 10-50795 (KJC) (the “*Adversary Proceeding*”), seeking to compel Advanta to request an extension of time to file the 2009 Consolidated Return or, in the alternative, elect to carry back the 2009 NOL five years (the “*Five-Year Carryback*”). [A.P. Docket No. 1]. On March 19, 2010, ABC filed an amended complaint in the Adversary Proceeding seeking, among other things, to void the Tax Elections. [A.P. Docket No. 8].

G. On March 19, 2010, ABC filed the Emergency Motion of ABC for Declaratory and Injunctive Relief in Connection With its Amended Complaint against Advanta Corp. [A.P. Docket No. 9] (the “*Injunction Motion*”), in which ABC seeks a declaration that the Tax Elections are null and void.

H. On the evening of March 19, 2010, the Utah Department of Financial Institutions closed ABC. The FDIC was appointed as receiver of ABC on the same day.

I. On May 14, 2010, the FDIC, as receiver of ABC, filed the Motion Seeking a Declaration that the Automatic Stay Does Not Apply or, In the Alternative, an Order Granting Relief From the Automatic Stay [A.P. Docket No. 25] (the “*Lift Stay Motion*” and, together with the Injunction Motion, the “*Motions*”), in which the FDIC requests that the automatic stay, to the extent that it applies, be lifted so that the FDIC may file with the IRS pursuant to section 6402(k) of the Internal Revenue Code and Treasury Regulation section 301.6402-7 competing consolidated federal income tax returns on behalf of the Affiliated Group with respect to the 2008 and 2009 taxable years and make the Five-Year Carryback with respect to the 2009 NOL (collectively, the “*FDIC Returns*”).

J. On April 6, 2010, the Bankruptcy Court entered a scheduling order (as later supplemented) establishing a schedule for resolution of the Motions and the Adversary Proceeding. [A.P. Docket No. 15].

K. On April 30, 2010 and May 28, 2010, Advanta and the Creditors’ Committee filed objections to the Injunction Motion and the Lift Stay Motion, respectively (the “*Objections*”). [A.P. Docket Nos. 17, 18, 32, and 33].

L. On May 14, 2010, the FDIC filed proofs of claim against one or more of the Debtors, which were assigned claim numbers 2335 (the “*FDIC POC 2335*”) and 2336 (the “*FDIC POC 2336*”, and together with the FDIC POC 2335, the “*FDIC Proofs of Claim*”). In FDIC POC 2336, the FDIC alleges that it has claims against Advanta in an amount that exceeds \$200 million, a portion of which the FDIC claims is entitled to superpriority or priority status.

M. On June 22, 2010, the Debtors filed a proof of claim against ABC in the FDIC receivership, asserting claims against ABC in the aggregate amount of at least \$19 million (the “*Advanta Proof of Claim*”, and together with the FDIC Proofs of Claim, the “*Proofs of Claim*”).

N. On or about August 13, 2010, the Parties agreed on the principles for resolving the Motions, the Adversary Proceeding and the Proofs of Claim, which were read into the record of the August 16, 2010 hearing held before the Bankruptcy Court in the Adversary Proceeding and the Chapter 11 Cases (the “*Principles*”). As stated on the record of the August 16, 2010 hearing, the FDIC intends to deliver to Advanta and the Creditors’ Committee before September 15, 2010 a written representation that it has all the necessary consents and authority to consummate this Agreement upon the terms set forth herein (the “*FDIC Representation*”), and it is the intent of the Parties that following receipt of the FDIC Representation, the FDIC will file the FDIC Returns on or before September 15, 2010.

NOW, THEREFORE, the Parties, in consideration of the foregoing and the mutual promises, covenants, representations, and agreements hereinafter described, and for such

other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

## AGREEMENT

Section 1. Recitals. The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.

Section 2. Construction. Terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any applicable law, will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “*include*”, “*includes*”, and “*including*” will be deemed to be followed by “*without limitation*”. Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “*this Agreement*”, “*herein*”, “*hereof*”, “*hereby*”, “*hereunder*”, and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

Section 3. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

Section 4. Effective Date. The effective date (the “*Effective Date*”) of this Agreement shall be the date upon which both of the following conditions are satisfied:

(a) entry of an order of the Bankruptcy Court approving the Agreement, including, without limitation, the settlement set forth herein, and authorizing the Debtors’ execution thereof; and

(b) delivery by the FDIC to Advanta and the Creditors’ Committee of the FDIC Representation.

Section 5. Settlement.

(a) Lifting of the Automatic Stay. On the Effective Date, the automatic stay imposed by section 362 of the Bankruptcy Code in the Chapter 11 Cases (to the extent such stay applies at all) shall be lifted to permit the FDIC to file with the IRS the FDIC Returns. Prior to filing the FDIC Returns, the FDIC shall consult with Advanta and the Creditors’ Committee regarding the form and substance of the FDIC Returns and the process of their filing. If the FDIC Representation is made and the FDIC Returns are filed in form and substance and by process satisfactory to Advanta and the Creditors’ Committee, Advanta will support and provide reasonable assistance to the FDIC in connection with the filing of the FDIC Returns; *provided, however*, that this Agreement shall not require Advanta or the Creditors’ Committee to agree that the filing of the 2009 Consolidated Return and the Amended 2008 Consolidated Return, and the

elections and waivers made as part thereof, were not authorized actions under the Bankruptcy Code.

(b) Sharing of Refund. If any FDIC Returns are filed and the IRS pays any refund to the FDIC, ABC, and/or Advanta in connection with any NOL carryback from 2009 for the Affiliated Group (the “**Refund**”), such Refund shall be shared between ABC and Advanta such that ABC shall receive 90% of such Refund and Advanta shall receive 10% of such Refund.

(c) Treatment of the FDIC Proofs of Claim.

(i) On the Effective Date, the FDIC POC 2335 shall be deemed withdrawn with prejudice without any further order of the Bankruptcy Court.

(ii) On the Effective Date, the FDIC POC 2336 shall be reduced and modified to be a contingent general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 (the “**Contingent Claim**”) without any further order of the Bankruptcy Court; *provided, however*, that such reduction in the FDIC POC 2336 shall not constitute a release of any claims the ABC Parties (as defined below) may have against any party other than the Debtors. The FDIC agrees, and agrees to cause the other ABC Parties (as defined below), not to assert or reassert any claims asserted in the FDIC Proofs of Claim that are released hereunder against any of the Parties released hereunder.

(iii) In the event the IRS pays the Refund, upon payment of such Refund, the Contingent Claim shall automatically be deemed withdrawn with prejudice without any further order of the Bankruptcy Court.

(iv) Upon a Final Determination (as defined below) that the Refund will not be paid, the Contingent Claim shall become an allowed general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 (the “**Allowed Claim**”) without any further order of the Bankruptcy Court. The Allowed Claim shall receive the treatment provided to other allowed general unsecured claims against Advanta pursuant to the terms of any confirmed chapter 11 plan. “**Final Determination**” for purposes of this Agreement shall mean a final, nonappealable determination by the IRS or a court of competent jurisdiction, as applicable (treating, for this purpose, the ability to file a suit for refund as the equivalent of an ability to appeal an adverse determination) or the expiration of the time to file such a suit or an appeal without such a suit or appeal being filed; *provided, however*, that following an otherwise Final Determination by the IRS, the FDIC may determine, in its sole discretion, not to file a suit for refund, in which event the receipt by Advanta (if prior to the effective date of Advanta’s chapter 11 plan) or the liquidating trustee or such other entity as is authorized under a confirmed chapter 11 plan to administer Advanta estate’s assets (if after the effective date of Advanta’s chapter 11 plan) of a written notice from the FDIC of its decision not to file a suit for refund (together with its affirmative representation that no suit for refund shall be filed) shall constitute a Final Determination. In the event that the FDIC decides to file a suit for refund, the FDIC shall pay all fees, costs and expenses of the FDIC incurred in connection with such suit, and the FDIC shall have no claim against the Advanta Parties on account of such fees and expenses.

(d) Withdrawal of Advanta Proof of Claim. On the Effective Date, the Advanta Proof of Claim shall be deemed withdrawn with prejudice and each of the Debtors and the Creditors' Committee agree, and agree to cause the other Debtor Parties (as defined below), not to assert or reassert the claims asserted in the Advanta Proof of Claim against any of the ABC Parties (as defined below).

(e) Release of the Advanta Parties. On the Effective Date, subject to Section 5(f) below, and without the need for the execution and delivery of additional documentation or the entry of any additional order of the Bankruptcy Court, the FDIC, ABC, any of ABC's wholly-owned subsidiaries, and all successors, assigns, heirs, and any other persons or entities that claim or might claim through, on behalf of or for the benefit of any of the foregoing (collectively, the "**ABC Parties**") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged (i) the Debtors, each of the Debtors' estates, each of the Debtors' non-debtor affiliates who are not ABC Parties, each of their present and former employees other than (x) officers or directors (who are only being released by the ABC Parties to the extent provided in Sections 5(f) and 5(i) below) and (y) dual employees of both ABC and Advanta, but solely in their capacity as ABC employees, *provided, however,* that no employee shall be released from any liability as a recipient of a fraudulent transfer or any other avoidable transfer recoverable by the ABC Parties, except as arising from the filing of the Tax Returns or the making of the Tax Elections, (ii) the Creditors' Committee, the members of the Creditors' Committee and such members' respective employees, officers, directors, managers, members and equityholders, and (iii) the respective counsel, advisors, successors and assigns of any of the foregoing (collectively, the "**Advanta Parties**"), from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of this Agreement against the Advanta Parties or any of them (collectively, the "**Advanta Released Claims**"). Notwithstanding anything contained in this Section 5(e) or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Advanta Parties from the performance of their obligations in accordance with this Agreement.

(f) Limited Release of Advanta D&Os. On the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional order of the Bankruptcy Court, the ABC Parties shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the Debtors' present and former directors and officers (collectively, the "**Advanta D&Os**") solely from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os or any of them arising from the filing of the Tax Returns or the making of the Tax Elections (collectively, the "**Advanta D&O Released Claims**").

(g) Release of the ABC Parties. On the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional order of

the Bankruptcy Court, the Debtors, each of the Debtors' estates, and each of the Debtors' non-debtor affiliates who are not ABC Parties (collectively, the "**Debtor Parties**") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the ABC Parties from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the Debtor Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of this Agreement against the ABC Parties or any of them (collectively, the "**FDIC Released Claims**"). Notwithstanding anything contained in this Section 5(g) or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the ABC Parties from the performance of their obligations in accordance with this Agreement.

(h) Limitation on Releases. Neither the Advanta Released Claims nor the FDIC Released Claims shall include claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action arising in whole after the execution of this Agreement, including, without limitation, any claims or causes of action arising from actions or failures to take action in respect of servicing or paying for the servicing of credit card receivables owned by any Debtor Party. The following shall not constitute a settlement credit in whole or in part, cap, bar, or defense in any respect, whether in law or in equity, based upon principles or defenses such as res judicata, collateral estoppel, and the like, to the Advanta D&Os in response to the Advanta D&O Reserved Claims (as defined below), or to any former or current attorney, accountant, appraiser, or employee of the ABC Parties: this Agreement or performance hereunder including (i) the reduction and modification of FDIC POC 2336 to the Contingent Claim; (ii) the Refund, if paid by the IRS; (iii) the Allowed Claim; (iv) the releases contained herein; or (v) the receipt or prospective receipt by the ABC Parties of any payment or distribution pursuant to this Agreement or the Allowed Claim. Despite the foregoing, if any court or arbitrator should determine that a settlement credit should be granted to any person or entity as a result of this Agreement, then the Parties agree that the allocation of the settlement proceeds received by the ABC Parties pursuant to this Agreement is 99% of the settlement proceeds are paid in settlement of the "Tax Related Entitlements" claims set forth in FDIC POC 2336 and 1% of the settlement proceeds are paid in settlement of all other claims of the ABC Parties released hereunder. In addition, other than as expressly provided for in Sections 5(f) and 5(i), and notwithstanding anything to the contrary elsewhere in this Agreement, the ABC Parties reserve and do not waive, release, acquit or discharge any other claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os (the "**Advanta D&O Reserved Claims**") or against any former or current attorney, accountant, appraiser, or employee of the ABC Parties.

(i) TSA. On the Effective Date, and without any further action by any party or entry of any additional order of the Bankruptcy Court, the ABC Parties shall be deemed no longer to be parties to the TSA and none of the ABC Parties, on the one hand, or the Debtor Parties and Advanta D&Os, on the other hand, shall have any claims against each other under or arising from the TSA (other than the rights to the Refund and the Contingent Claim as expressly

provided herein); *provided, however*, that nothing in this Agreement shall affect any rights or claims of the Debtor Parties with respect to each other under the TSA or constitute an assumption or rejection of the TSA nor shall this Agreement affect any rights or claims of the ABC Parties against the Advanta D&Os under or arising from the TSA prior to the Effective Date that are not related to the Advanta D&O Released Claims or the alleged damages underlying such claims.

(j) Tax Returns. The Parties agree, and agree to cause the other ABC Parties and Debtor Parties (as applicable), not to contest any tax returns or tax elections filed or to be filed by either Party on behalf of their respective affiliated group, which, in the case of the ABC Parties shall mean its affiliated group as constituted after ABC's deconsolidation from the Advanta Group, other than by filing and supporting the FDIC Returns. The Parties shall reasonably cooperate in connection with any tax filings of the other Party's affiliated group for the 2010 tax year or any portion thereof.

(k) Dismissal of Adversary Proceeding and Withdrawal of the Motions. On the Effective Date, any and all claims for relief sought in the Adversary Proceeding by any of the Parties are hereby withdrawn and dismissed. Within three (3) business days after the Effective Date, the FDIC shall file a notice of dismissal with prejudice of the Adversary Proceeding and withdrawal with prejudice of the Motions.

Section 6. Representation and Warranties. As a material inducement to the other Parties to enter into this Agreement, each Party unconditionally represents and warrants that: (a) it has been advised to consult with an attorney regarding the terms of this Agreement; (b) this Agreement has been reviewed by such Party and its counsel; (c) it has consulted with, or has had sufficient opportunity to consult with, its own counsel or other advisors regarding the terms of this Agreement; (d) it has relied solely on its own judgment and that of its attorneys, advisors, and representatives regarding the consideration for, and the terms of, this Agreement; (e) any and all questions regarding the terms of this Agreement have been asked and answered to its complete satisfaction; (f) it has read this Agreement and fully understands its terms and their import; (g) the consideration provided for herein is good and valuable; (h) it is entering into this Agreement voluntarily, of its own free will, and without any duress, coercion, or undue influence exerted by or on behalf of any other Party or any other person or entity; (i) it is the lawful owner of the claims and the potential claims it is releasing in this Agreement; (j) it has full capacity and authority to settle, compromise, and release its claims and potential claims and to enter into this Agreement; *provided, however*, that in the case of the FDIC, said shall be true as of the time of its delivery of the FDIC Representation; (k) no other person or entity has acquired or has been assigned, or will in the future acquire or have any right to assert, against another Party any portion of the claims or potential claims it has released in this Agreement; (l) it knows of no other person or entity that intends to assert a claim released herein by, through, under, or on behalf of it; and (m) the individual executing this Agreement on behalf of such Party is duly authorized to enter into and deliver this Agreement and, subject to the Debtors obtaining Bankruptcy Court approval and the FDIC delivering the FDIC Representation, has obtained all necessary institutional, corporate and governmental consents and approvals to bind such Party hereto and consummate the terms of this Agreement. The Parties acknowledge and agree that the representations and warranties contained in this Section 6 survive the execution of this Agreement.

Section 7. Termination.

(a) This Agreement may be terminated upon written notice by any Party to the other Parties if the FDIC does not deliver the FDIC Representation to Advanta and the Creditors' Committee by September 30, 2010.

(b) This Agreement shall be null and void if the Bankruptcy Court does not approve this Agreement by the later of the date of delivery of the FDIC Representation or September 15, 2010.

(c) In the event this Agreement is terminated pursuant to Section 7(a) hereof, (i) any Party may make a written request to the Bankruptcy Court that the Adversary Proceeding be reset for an evidentiary hearing before the Bankruptcy Court; (ii) in such restored Adversary Proceeding or otherwise, neither the FDIC nor ABC shall make any argument, claim or assertion with respect to the fact that the FDIC Returns have not been filed or that they have not been filed by any particular date, and the Parties otherwise agree that, except as provided in sub-section 7(c)(iii) below, none of the Parties shall be prejudiced by the existence or terms of this Agreement or the termination thereof; and (iii) neither the FDIC nor ABC shall, until thirty (30) days after the merits of the FDIC's claims (if any) in respect of the TSA are adjudicated by the Bankruptcy Court by a final order (including resolution of any subsequent appeals or expiration of any period for filing appeals has lapsed without the filing of any appeal or motion to stay), (I) file the FDIC Returns without seeking to lift the automatic stay, (II) seek to lift the automatic stay to file the FDIC Returns, or (III) seek authorization in any other forum to effectuate the filing of the FDIC Returns.

Section 8. Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party. Should such modification, amendment, or supplement be material, it will not be effective unless and until the Bankruptcy Court enters a final, non-appealable order approving such modification, amendment, or supplement.

Section 9. No Admission of Liability. By entering into this Agreement, the Parties do not admit, and do specifically deny, any violation of any contract or local, state, or federal law, common law, or statute. Neither the execution of this Agreement nor compliance with its terms, nor the consideration provided for herein shall constitute or be construed as an admission by any Party (or any Party's officers, directors, agents, representatives, attorneys, or employees) of any fault, wrongdoing, or liability whatsoever, and the Parties acknowledge that all such liability is expressly denied. This Agreement has been entered into in release and compromise of claims as stated herein.

Section 10. Good Faith Negotiations. Each of the Parties acknowledges that: the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each Party's own free will; each knows all of the relevant facts and its rights in connection therewith; and it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any Party or employee, agent, attorney or representative of any Party. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense, uncertainty,



and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties that are settled by the execution of this Agreement.

Section 11. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Advanta Parties, the Advanta D&Os, and the FDIC Parties any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Advanta Parties, the Advanta D&Os, and the FDIC Parties.

Section 12. Governing Law; Retention of Jurisdiction; Service of Process. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without giving effect to any principles of conflicts of law. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding between any or all of the foregoing with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought solely in the Bankruptcy Court, and, by execution and delivery of this Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 18 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 18 hereof. For the avoidance of doubt, this Section shall not apply to the filing, assertion, prosecution, or defense of any claims or potential claims that are not being released pursuant to this Agreement.

Section 13. Headings. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 14. Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 15. Entire Agreement. This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, statements on the record, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof other than representations and

statements on the record made by the FDIC prior to the date hereof with regard to its authority to enter into this Agreement or agree to the Principles.

Section 16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 17. Notices. All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when personally delivered by courier service or messenger, (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted electronically (by e-mail transmission) or by facsimile, with confirmation of receipt, or (iii) three (3) business days after being duly deposited in the United States mail, by certified or registered mail, postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing:

If to the Debtors, to:

Advanta Corp.  
Plymouth Corporate Center,  
625 W. Ridge Pike  
Building E, Suite 100  
Conshohocken, Pennsylvania 19428  
Attention: Jay A. Dubow, General Counsel  
Facsimile: (215) 444-5915  
Email: [jdubow@advanta.com](mailto:jdubow@advanta.com)

with a copy given in like manner to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Robert J. Lemons, Esq.  
Victoria Vron, Esq.  
Fax: (212) 310-8007  
Email: [robert.lemons@weil.com](mailto:robert.lemons@weil.com)  
Email: [victoria.vron@weil.com](mailto:victoria.vron@weil.com)

If to the Creditors' Committee, to:

Latham & Watkins LLP  
885 Third Avenue, Suite 1000  
New York, New York 10003  
Attention: Mitchell A. Seider, Esq.  
Roger G. Schwartz, Esq.  
Facsimile: (212) 751-4864  
Email: [mitchell.seider@lw.com](mailto:mitchell.seider@lw.com)  
Email: [roger.schwartz@lw.com](mailto:roger.schwartz@lw.com)

If to the FDIC, to:

Federal Deposit Insurance Corporation  
Legal Division  
3501 Fairfax Drive, VS-D-  
Arlington, Virginia 22226  
Attention: Kathryn R. Norcross (of counsel)  
Dennis J. Early (of counsel)  
Facsimile: (703) 562-2475  
Email: [knorcross@fdic.gov](mailto:knorcross@fdic.gov)  
Email: [dearly@fdic.gov](mailto:dearly@fdic.gov)

with a copy given in like manner to:

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173  
Attention: Geoffrey T. Raicht  
Facsimile: (212) 547-5444  
Email: [graicht@mwe.com](mailto:graicht@mwe.com)

Section 18. Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

**THE UNDERSIGNED WARRANT THAT THEY HAVE READ THE TERMS OF THIS AGREEMENT, HAVE HAD THE ADVICE OF COUNSEL OR THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH READING, UNDERSTANDING AND EXECUTING THE AGREEMENT, AND HAVE FULL KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

ADVANTA CORP., on behalf of itself and its debtor affiliates, as Debtor and Debtor in Possession

By: /s/ William A. Rosoff  
Name: William A. Rosoff  
Title: President and Vice Chairman of the Board of Directors

CREDITORS' COMMITTEE

By: /s/ Michael Stern  
Name: Michael Stern  
Title: Chairman

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for Advanta Bank Corp.

By: /s/ Dennis J. Early  
Name: Dennis J. Early  
Title: Counsel

# **EXHIBIT B**

**Proposed Order**

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

-----	X	
In re	:	Chapter 11
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
Debtors.	:	(Jointly Administered)
-----	:	
ADVANTA BANK CORP.,	:	
Plaintiff,	:	
v.	:	Adv. Proc. No. 10-50795 (KJC)
ADVANTA CORP.,	:	
Defendant.	:	
-----	X	

**ORDER APPROVING THE SETTLEMENT AGREEMENT  
BETWEEN ADVANTA CORP., THE FEDERAL DEPOSIT  
INSURANCE CORPORATION, AS RECEIVER FOR ADVANTA BANK  
CORP., AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Upon the motion (the “*Motion*”) dated August 27, 2010 of Advanta Corp. (“*Advanta*”) for an order, pursuant to section 105(a) of the Bankruptcy Code<sup>1</sup> and Bankruptcy Rule 9019, (i) approving the Settlement Agreement by and among Advanta, the Federal Deposit Insurance Corporation (the “*FDIC*”), as receiver for Advanta Bank Corp. (“*ABC*”), and the official committee of unsecured creditors appointed in these chapter 11 cases (the “*Creditors’ Committee*”, and together with Advanta and the FDIC, the “*Parties*”), a copy of which is attached hereto as *Exhibit 1*, (ii) disallowing and expunging entirely or modifying certain proofs

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of claim, as set forth in the Settlement Agreement, and (iii) lifting the automatic stay to the extent provided for in the Settlement Agreement, all as more fully set forth in the Motion; and it appearing that the Court has jurisdiction over this matter; and due notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and it further appearing that the Settlement Agreement is fair, reasonable, and in the best interests of Advanta, its estate and creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The Settlement Agreement is APPROVED.
3. Upon satisfaction of the conditions set forth in Section 4 of the Settlement Agreement (the “*Effective Date*”), and without further order of the Court, the automatic stay extant under 11 U.S.C. § 362 (the “*Automatic Stay*”) shall be lifted to the extent necessary to permit the FDIC to file the FDIC Returns. Except to the extent set forth in the preceding sentence, the provisions of the Automatic Stay shall remain in full force and effect.

4. Upon the Effective Date, and without any further order of this Court, Claim No. 2335 shall be deemed withdrawn with prejudice. Further, upon the Effective Date, and without any further order of this Court, Claim No. 2336 shall be reduced and modified to be a contingent general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000; *provided, however*, that (a) if the IRS pays any refund in connection with any net operating loss carryback from 2009 for the Affiliated Group (the “*Refund*”), Claim No. 2336 shall be deemed withdrawn with prejudice without further order of the Court, or (b) if there is a Final Determination (as defined in the Settlement Agreement) that the Refund will not be paid, Claim No. 2336 shall become an allowed general unsecured claim against Advanta’s chapter 11

estate in the amount of \$50,000,000, without further order of the Court, and shall receive the treatment provided to other allowed general unsecured claims against Advanta pursuant to the terms of any confirmed chapter 11 plan.

5. Upon the Effective Date, or as otherwise provided for in the Settlement Agreement, the Debtors' claims agent is authorized and directed to delete Claim No. 2335 from the official claims registry in these chapter 11 cases, to modify Claim No. 2336 as set forth in this Order, and to make other changes to the official claims registry as necessary to reflect the terms of the Settlement Agreement and/or this Order.

6. The Parties are authorized and directed to execute, deliver, implement, and fully perform any and all obligations, instruments, documents, and papers and to take any and all actions reasonably necessary or appropriate to consummate the transactions contemplated under the Settlement Agreement.

7. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of the Settlement Agreement and this Order.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
CHIEF UNITED STATES BANKRUPTCY JUDGE



# **EXHIBIT 1**

## **Settlement Agreement**

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the “*Agreement*”) is dated as of August 27, 2010, by and between Advanta Corp. (“*Advanta*”) and its debtor affiliates, as debtors and debtors in possession (the “*Debtors*”), the Creditors’ Committee (as defined below), and the Federal Deposit Insurance Corporation (the “*FDIC*”), on behalf of itself and Advanta Bank Corp. (“*ABC*”), for which it is the receiver pursuant to 12 U.S.C. § 1821(c). The signatories hereto are referred to hereinafter collectively as the “*Parties*” or individually as a “*Party*”.

**RECITALS**

A. On November 8, 2009, Advanta and certain of the Debtors filed their petitions under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and other Debtors filed petitions under chapter 11 of the Bankruptcy Code on November 20, 2009. The Debtors’ chapter 11 cases (the “*Chapter 11 Cases*”) are being jointly administered under Case No. 09-13931 (KJC) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

B. On November 24, 2009, the official committee of unsecured creditors (the “*Creditors’ Committee*”) was appointed in the Chapter 11 Cases.

C. Advanta is the common parent of an affiliated group of corporations, including ABC, that has filed consolidated returns for federal income tax purposes (collectively, the “*Affiliated Group*”). Advanta and the Affiliated Group are parties to a Tax Sharing Agreement, the applicable version of which (as amended) is dated as of May 1, 1995 (the “*TSA*”). The TSA applies to Advanta’s filing of both federal and state tax returns on behalf of the Affiliated Group and the tax sharing obligations amongst the members of the Affiliated Group.

D. On March 14, 2010, Advanta filed with the Internal Revenue Service (the “*IRS*”) a 2009 consolidated federal income tax return for the Affiliated Group (the “*2009 Consolidated Return*”), in which it elected to waive any net operating loss (“*NOL*”) carryback with respect to the Affiliated Group’s 2009 NOL, thus resulting in the carryforward of the full 2009 NOL (the “*2009 Tax Election*”).

E. Also on March 14, 2010, Advanta filed with the IRS an amended 2008 consolidated federal income tax return for the Affiliated Group (the “*Amended 2008 Consolidated Return*”), and together with the 2009 Consolidated Return, the “*Tax Returns*”) electing to carry back the Affiliated Group’s 2008 NOL five years (the “*2008 Tax Election*”), and together with the 2009 Tax Election, the “*Tax Elections*”).

F. On March 14, 2010, ABC filed a complaint against Advanta thereby initiating an adversary proceeding, which was assigned Case No. 10-50795 (KJC) (the “*Adversary Proceeding*”), seeking to compel Advanta to request an extension of time to file the 2009 Consolidated Return or, in the alternative, elect to carry back the 2009 NOL five years (the “*Five-Year Carryback*”). [A.P. Docket No. 1]. On March 19, 2010, ABC filed an amended complaint in the Adversary Proceeding seeking, among other things, to void the Tax Elections. [A.P. Docket No. 8].

G. On March 19, 2010, ABC filed the Emergency Motion of ABC for Declaratory and Injunctive Relief in Connection With its Amended Complaint against Advanta Corp. [A.P. Docket No. 9] (the “**Injunction Motion**”), in which ABC seeks a declaration that the Tax Elections are null and void.

H. On the evening of March 19, 2010, the Utah Department of Financial Institutions closed ABC. The FDIC was appointed as receiver of ABC on the same day.

I. On May 14, 2010, the FDIC, as receiver of ABC, filed the Motion Seeking a Declaration that the Automatic Stay Does Not Apply or, In the Alternative, an Order Granting Relief From the Automatic Stay [A.P. Docket No. 25] (the “**Lift Stay Motion**” and, together with the Injunction Motion, the “**Motions**”), in which the FDIC requests that the automatic stay, to the extent that it applies, be lifted so that the FDIC may file with the IRS pursuant to section 6402(k) of the Internal Revenue Code and Treasury Regulation section 301.6402-7 competing consolidated federal income tax returns on behalf of the Affiliated Group with respect to the 2008 and 2009 taxable years and make the Five-Year Carryback with respect to the 2009 NOL (collectively, the “**FDIC Returns**”).

J. On April 6, 2010, the Bankruptcy Court entered a scheduling order (as later supplemented) establishing a schedule for resolution of the Motions and the Adversary Proceeding. [A.P. Docket No. 15].

K. On April 30, 2010 and May 28, 2010, Advanta and the Creditors’ Committee filed objections to the Injunction Motion and the Lift Stay Motion, respectively (the “**Objections**”). [A.P. Docket Nos. 17, 18, 32, and 33].

L. On May 14, 2010, the FDIC filed proofs of claim against one or more of the Debtors, which were assigned claim numbers 2335 (the “**FDIC POC 2335**”) and 2336 (the “**FDIC POC 2336**”, and together with the FDIC POC 2335, the “**FDIC Proofs of Claim**”). In FDIC POC 2336, the FDIC alleges that it has claims against Advanta in an amount that exceeds \$200 million, a portion of which the FDIC claims is entitled to superpriority or priority status.

M. On June 22, 2010, the Debtors filed a proof of claim against ABC in the FDIC receivership, asserting claims against ABC in the aggregate amount of at least \$19 million (the “**Advanta Proof of Claim**”, and together with the FDIC Proofs of Claim, the “**Proofs of Claim**”).

N. On or about August 13, 2010, the Parties agreed on the principles for resolving the Motions, the Adversary Proceeding and the Proofs of Claim, which were read into the record of the August 16, 2010 hearing held before the Bankruptcy Court in the Adversary Proceeding and the Chapter 11 Cases (the “**Principles**”). As stated on the record of the August 16, 2010 hearing, the FDIC intends to deliver to Advanta and the Creditors’ Committee before September 15, 2010 a written representation that it has all the necessary consents and authority to consummate this Agreement upon the terms set forth herein (the “**FDIC Representation**”), and it is the intent of the Parties that following receipt of the FDIC Representation, the FDIC will file the FDIC Returns on or before September 15, 2010.

NOW, THEREFORE, the Parties, in consideration of the foregoing and the mutual promises, covenants, representations, and agreements hereinafter described, and for such

other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

## AGREEMENT

Section 1. Recitals. The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.

Section 2. Construction. Terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any applicable law, will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “*include*”, “*includes*”, and “*including*” will be deemed to be followed by “*without limitation*”. Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “*this Agreement*”, “*herein*”, “*hereof*”, “*hereby*”, “*hereunder*”, and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

Section 3. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

Section 4. Effective Date. The effective date (the “*Effective Date*”) of this Agreement shall be the date upon which both of the following conditions are satisfied:

(a) entry of an order of the Bankruptcy Court approving the Agreement, including, without limitation, the settlement set forth herein, and authorizing the Debtors’ execution thereof; and

(b) delivery by the FDIC to Advanta and the Creditors’ Committee of the FDIC Representation.

Section 5. Settlement.

(a) Lifting of the Automatic Stay. On the Effective Date, the automatic stay imposed by section 362 of the Bankruptcy Code in the Chapter 11 Cases (to the extent such stay applies at all) shall be lifted to permit the FDIC to file with the IRS the FDIC Returns. Prior to filing the FDIC Returns, the FDIC shall consult with Advanta and the Creditors’ Committee regarding the form and substance of the FDIC Returns and the process of their filing. If the FDIC Representation is made and the FDIC Returns are filed in form and substance and by process satisfactory to Advanta and the Creditors’ Committee, Advanta will support and provide reasonable assistance to the FDIC in connection with the filing of the FDIC Returns; *provided, however*, that this Agreement shall not require Advanta or the Creditors’ Committee to agree that the filing of the 2009 Consolidated Return and the Amended 2008 Consolidated Return, and the

elections and waivers made as part thereof, were not authorized actions under the Bankruptcy Code.

(b) Sharing of Refund. If any FDIC Returns are filed and the IRS pays any refund to the FDIC, ABC, and/or Advanta in connection with any NOL carryback from 2009 for the Affiliated Group (the “**Refund**”), such Refund shall be shared between ABC and Advanta such that ABC shall receive 90% of such Refund and Advanta shall receive 10% of such Refund.

(c) Treatment of the FDIC Proofs of Claim.

(i) On the Effective Date, the FDIC POC 2335 shall be deemed withdrawn with prejudice without any further order of the Bankruptcy Court.

(ii) On the Effective Date, the FDIC POC 2336 shall be reduced and modified to be a contingent general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 (the “**Contingent Claim**”) without any further order of the Bankruptcy Court; *provided, however*, that such reduction in the FDIC POC 2336 shall not constitute a release of any claims the ABC Parties (as defined below) may have against any party other than the Debtors. The FDIC agrees, and agrees to cause the other ABC Parties (as defined below), not to assert or reassert any claims asserted in the FDIC Proofs of Claim that are released hereunder against any of the Parties released hereunder.

(iii) In the event the IRS pays the Refund, upon payment of such Refund, the Contingent Claim shall automatically be deemed withdrawn with prejudice without any further order of the Bankruptcy Court.

(iv) Upon a Final Determination (as defined below) that the Refund will not be paid, the Contingent Claim shall become an allowed general unsecured claim against Advanta’s chapter 11 estate in the amount of \$50,000,000 (the “**Allowed Claim**”) without any further order of the Bankruptcy Court. The Allowed Claim shall receive the treatment provided to other allowed general unsecured claims against Advanta pursuant to the terms of any confirmed chapter 11 plan. “**Final Determination**” for purposes of this Agreement shall mean a final, nonappealable determination by the IRS or a court of competent jurisdiction, as applicable (treating, for this purpose, the ability to file a suit for refund as the equivalent of an ability to appeal an adverse determination) or the expiration of the time to file such a suit or an appeal without such a suit or appeal being filed; *provided, however*, that following an otherwise Final Determination by the IRS, the FDIC may determine, in its sole discretion, not to file a suit for refund, in which event the receipt by Advanta (if prior to the effective date of Advanta’s chapter 11 plan) or the liquidating trustee or such other entity as is authorized under a confirmed chapter 11 plan to administer Advanta estate’s assets (if after the effective date of Advanta’s chapter 11 plan) of a written notice from the FDIC of its decision not to file a suit for refund (together with its affirmative representation that no suit for refund shall be filed) shall constitute a Final Determination. In the event that the FDIC decides to file a suit for refund, the FDIC shall pay all fees, costs and expenses of the FDIC incurred in connection with such suit, and the FDIC shall have no claim against the Advanta Parties on account of such fees and expenses.

(d) Withdrawal of Advanta Proof of Claim. On the Effective Date, the Advanta Proof of Claim shall be deemed withdrawn with prejudice and each of the Debtors and the Creditors' Committee agree, and agree to cause the other Debtor Parties (as defined below), not to assert or reassert the claims asserted in the Advanta Proof of Claim against any of the ABC Parties (as defined below).

(e) Release of the Advanta Parties. On the Effective Date, subject to Section 5(f) below, and without the need for the execution and delivery of additional documentation or the entry of any additional order of the Bankruptcy Court, the FDIC, ABC, any of ABC's wholly-owned subsidiaries, and all successors, assigns, heirs, and any other persons or entities that claim or might claim through, on behalf of or for the benefit of any of the foregoing (collectively, the "**ABC Parties**") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged (i) the Debtors, each of the Debtors' estates, each of the Debtors' non-debtor affiliates who are not ABC Parties, each of their present and former employees other than (x) officers or directors (who are only being released by the ABC Parties to the extent provided in Sections 5(f) and 5(i) below) and (y) dual employees of both ABC and Advanta, but solely in their capacity as ABC employees, *provided, however,* that no employee shall be released from any liability as a recipient of a fraudulent transfer or any other avoidable transfer recoverable by the ABC Parties, except as arising from the filing of the Tax Returns or the making of the Tax Elections, (ii) the Creditors' Committee, the members of the Creditors' Committee and such members' respective employees, officers, directors, managers, members and equityholders, and (iii) the respective counsel, advisors, successors and assigns of any of the foregoing (collectively, the "**Advanta Parties**"), from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of this Agreement against the Advanta Parties or any of them (collectively, the "**Advanta Released Claims**"). Notwithstanding anything contained in this Section 5(e) or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Advanta Parties from the performance of their obligations in accordance with this Agreement.

(f) Limited Release of Advanta D&Os. On the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional order of the Bankruptcy Court, the ABC Parties shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the Debtors' present and former directors and officers (collectively, the "**Advanta D&Os**") solely from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os or any of them arising from the filing of the Tax Returns or the making of the Tax Elections (collectively, the "**Advanta D&O Released Claims**").

(g) Release of the ABC Parties. On the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional order of

the Bankruptcy Court, the Debtors, each of the Debtors' estates, and each of the Debtors' non-debtor affiliates who are not ABC Parties (collectively, the "**Debtor Parties**") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged the ABC Parties from any and all claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the Debtor Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have arising in whole or in part prior to the execution of this Agreement against the ABC Parties or any of them (collectively, the "**FDIC Released Claims**"). Notwithstanding anything contained in this Section 5(g) or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the ABC Parties from the performance of their obligations in accordance with this Agreement.

(h) Limitation on Releases. Neither the Advanta Released Claims nor the FDIC Released Claims shall include claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action arising in whole after the execution of this Agreement, including, without limitation, any claims or causes of action arising from actions or failures to take action in respect of servicing or paying for the servicing of credit card receivables owned by any Debtor Party. The following shall not constitute a settlement credit in whole or in part, cap, bar, or defense in any respect, whether in law or in equity, based upon principles or defenses such as res judicata, collateral estoppel, and the like, to the Advanta D&Os in response to the Advanta D&O Reserved Claims (as defined below), or to any former or current attorney, accountant, appraiser, or employee of the ABC Parties: this Agreement or performance hereunder including (i) the reduction and modification of FDIC POC 2336 to the Contingent Claim; (ii) the Refund, if paid by the IRS; (iii) the Allowed Claim; (iv) the releases contained herein; or (v) the receipt or prospective receipt by the ABC Parties of any payment or distribution pursuant to this Agreement or the Allowed Claim. Despite the foregoing, if any court or arbitrator should determine that a settlement credit should be granted to any person or entity as a result of this Agreement, then the Parties agree that the allocation of the settlement proceeds received by the ABC Parties pursuant to this Agreement is 99% of the settlement proceeds are paid in settlement of the "Tax Related Entitlements" claims set forth in FDIC POC 2336 and 1% of the settlement proceeds are paid in settlement of all other claims of the ABC Parties released hereunder. In addition, other than as expressly provided for in Sections 5(f) and 5(i), and notwithstanding anything to the contrary elsewhere in this Agreement, the ABC Parties reserve and do not waive, release, acquit or discharge any other claims (as defined in section 101(5) of the Bankruptcy Code), demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the ABC Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit have or may have or claim to have against the Advanta D&Os (the "**Advanta D&O Reserved Claims**") or against any former or current attorney, accountant, appraiser, or employee of the ABC Parties.

(i) TSA. On the Effective Date, and without any further action by any party or entry of any additional order of the Bankruptcy Court, the ABC Parties shall be deemed no longer to be parties to the TSA and none of the ABC Parties, on the one hand, or the Debtor Parties and Advanta D&Os, on the other hand, shall have any claims against each other under or arising from the TSA (other than the rights to the Refund and the Contingent Claim as expressly

provided herein); *provided, however*, that nothing in this Agreement shall affect any rights or claims of the Debtor Parties with respect to each other under the TSA or constitute an assumption or rejection of the TSA nor shall this Agreement affect any rights or claims of the ABC Parties against the Advanta D&Os under or arising from the TSA prior to the Effective Date that are not related to the Advanta D&O Released Claims or the alleged damages underlying such claims.

(j) Tax Returns. The Parties agree, and agree to cause the other ABC Parties and Debtor Parties (as applicable), not to contest any tax returns or tax elections filed or to be filed by either Party on behalf of their respective affiliated group, which, in the case of the ABC Parties shall mean its affiliated group as constituted after ABC's deconsolidation from the Advanta Group, other than by filing and supporting the FDIC Returns. The Parties shall reasonably cooperate in connection with any tax filings of the other Party's affiliated group for the 2010 tax year or any portion thereof.

(k) Dismissal of Adversary Proceeding and Withdrawal of the Motions. On the Effective Date, any and all claims for relief sought in the Adversary Proceeding by any of the Parties are hereby withdrawn and dismissed. Within three (3) business days after the Effective Date, the FDIC shall file a notice of dismissal with prejudice of the Adversary Proceeding and withdrawal with prejudice of the Motions.

Section 6. Representation and Warranties. As a material inducement to the other Parties to enter into this Agreement, each Party unconditionally represents and warrants that: (a) it has been advised to consult with an attorney regarding the terms of this Agreement; (b) this Agreement has been reviewed by such Party and its counsel; (c) it has consulted with, or has had sufficient opportunity to consult with, its own counsel or other advisors regarding the terms of this Agreement; (d) it has relied solely on its own judgment and that of its attorneys, advisors, and representatives regarding the consideration for, and the terms of, this Agreement; (e) any and all questions regarding the terms of this Agreement have been asked and answered to its complete satisfaction; (f) it has read this Agreement and fully understands its terms and their import; (g) the consideration provided for herein is good and valuable; (h) it is entering into this Agreement voluntarily, of its own free will, and without any duress, coercion, or undue influence exerted by or on behalf of any other Party or any other person or entity; (i) it is the lawful owner of the claims and the potential claims it is releasing in this Agreement; (j) it has full capacity and authority to settle, compromise, and release its claims and potential claims and to enter into this Agreement; *provided, however*, that in the case of the FDIC, said shall be true as of the time of its delivery of the FDIC Representation; (k) no other person or entity has acquired or has been assigned, or will in the future acquire or have any right to assert, against another Party any portion of the claims or potential claims it has released in this Agreement; (l) it knows of no other person or entity that intends to assert a claim released herein by, through, under, or on behalf of it; and (m) the individual executing this Agreement on behalf of such Party is duly authorized to enter into and deliver this Agreement and, subject to the Debtors obtaining Bankruptcy Court approval and the FDIC delivering the FDIC Representation, has obtained all necessary institutional, corporate and governmental consents and approvals to bind such Party hereto and consummate the terms of this Agreement. The Parties acknowledge and agree that the representations and warranties contained in this Section 6 survive the execution of this Agreement.



Section 7. Termination.

(a) This Agreement may be terminated upon written notice by any Party to the other Parties if the FDIC does not deliver the FDIC Representation to Advanta and the Creditors' Committee by September 30, 2010.

(b) This Agreement shall be null and void if the Bankruptcy Court does not approve this Agreement by the later of the date of delivery of the FDIC Representation or September 15, 2010.

(c) In the event this Agreement is terminated pursuant to Section 7(a) hereof, (i) any Party may make a written request to the Bankruptcy Court that the Adversary Proceeding be reset for an evidentiary hearing before the Bankruptcy Court; (ii) in such restored Adversary Proceeding or otherwise, neither the FDIC nor ABC shall make any argument, claim or assertion with respect to the fact that the FDIC Returns have not been filed or that they have not been filed by any particular date, and the Parties otherwise agree that, except as provided in sub-section 7(c)(iii) below, none of the Parties shall be prejudiced by the existence or terms of this Agreement or the termination thereof; and (iii) neither the FDIC nor ABC shall, until thirty (30) days after the merits of the FDIC's claims (if any) in respect of the TSA are adjudicated by the Bankruptcy Court by a final order (including resolution of any subsequent appeals or expiration of any period for filing appeals has lapsed without the filing of any appeal or motion to stay), (I) file the FDIC Returns without seeking to lift the automatic stay, (II) seek to lift the automatic stay to file the FDIC Returns, or (III) seek authorization in any other forum to effectuate the filing of the FDIC Returns.

Section 8. Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party. Should such modification, amendment, or supplement be material, it will not be effective unless and until the Bankruptcy Court enters a final, non-appealable order approving such modification, amendment, or supplement.

Section 9. No Admission of Liability. By entering into this Agreement, the Parties do not admit, and do specifically deny, any violation of any contract or local, state, or federal law, common law, or statute. Neither the execution of this Agreement nor compliance with its terms, nor the consideration provided for herein shall constitute or be construed as an admission by any Party (or any Party's officers, directors, agents, representatives, attorneys, or employees) of any fault, wrongdoing, or liability whatsoever, and the Parties acknowledge that all such liability is expressly denied. This Agreement has been entered into in release and compromise of claims as stated herein.

Section 10. Good Faith Negotiations. Each of the Parties acknowledges that: the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each Party's own free will; each knows all of the relevant facts and its rights in connection therewith; and it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any Party or employee, agent, attorney or representative of any Party. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense, uncertainty,

and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties that are settled by the execution of this Agreement.

Section 11. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Advanta Parties, the Advanta D&Os, and the FDIC Parties any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Advanta Parties, the Advanta D&Os, and the FDIC Parties.

Section 12. Governing Law; Retention of Jurisdiction; Service of Process. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without giving effect to any principles of conflicts of law. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding between any or all of the foregoing with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought solely in the Bankruptcy Court, and, by execution and delivery of this Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 18 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 18 hereof. For the avoidance of doubt, this Section shall not apply to the filing, assertion, prosecution, or defense of any claims or potential claims that are not being released pursuant to this Agreement.

Section 13. Headings. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 14. Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 15. Entire Agreement. This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, statements on the record, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof other than representations and

statements on the record made by the FDIC prior to the date hereof with regard to its authority to enter into this Agreement or agree to the Principles.

Section 16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 17. Notices. All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when personally delivered by courier service or messenger, (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted electronically (by e-mail transmission) or by facsimile, with confirmation of receipt, or (iii) three (3) business days after being duly deposited in the United States mail, by certified or registered mail, postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing:

If to the Debtors, to:

Advanta Corp.  
Plymouth Corporate Center,  
625 W. Ridge Pike  
Building E, Suite 100  
Conshohocken, Pennsylvania 19428  
Attention: Jay A. Dubow, General Counsel  
Facsimile: (215) 444-5915  
Email: [jdubow@advanta.com](mailto:jdubow@advanta.com)

with a copy given in like manner to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Robert J. Lemons, Esq.  
Victoria Vron, Esq.  
Fax: (212) 310-8007  
Email: [robert.lemons@weil.com](mailto:robert.lemons@weil.com)  
Email: [victoria.vron@weil.com](mailto:victoria.vron@weil.com)

If to the Creditors' Committee, to:

Latham & Watkins LLP  
885 Third Avenue, Suite 1000  
New York, New York 10003  
Attention: Mitchell A. Seider, Esq.  
Roger G. Schwartz, Esq.  
Facsimile: (212) 751-4864  
Email: [mitchell.seider@lw.com](mailto:mitchell.seider@lw.com)  
Email: [roger.schwartz@lw.com](mailto:roger.schwartz@lw.com)

If to the FDIC, to:

Federal Deposit Insurance Corporation  
Legal Division  
3501 Fairfax Drive, VS-D-  
Arlington, Virginia 22226  
Attention: Kathryn R. Norcross (of counsel)  
Dennis J. Early (of counsel)  
Facsimile: (703) 562-2475  
Email: [knorcross@fdic.gov](mailto:knorcross@fdic.gov)  
Email: [dearly@fdic.gov](mailto:dearly@fdic.gov)

with a copy given in like manner to:

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173  
Attention: Geoffrey T. Raicht  
Facsimile: (212) 547-5444  
Email: [graicht@mwe.com](mailto:graicht@mwe.com)

Section 18. Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

**THE UNDERSIGNED WARRANT THAT THEY HAVE READ THE TERMS OF THIS AGREEMENT, HAVE HAD THE ADVICE OF COUNSEL OR THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH READING, UNDERSTANDING AND EXECUTING THE AGREEMENT, AND HAVE FULL KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

ADVANTA CORP., on behalf of itself and its debtor affiliates, as Debtor and Debtor in Possession

By: /s/ William A. Rosoff  
Name: William A. Rosoff  
Title: President and Vice Chairman of the Board of Directors

CREDITORS' COMMITTEE

By: /s/ Michael Stern  
Name: Michael Stern  
Title: Chairman

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for Advanta Bank Corp.

By: /s/ Dennis J. Early  
Name: Dennis J. Early  
Title: Counsel