

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

	X	
	:	
<i>In re</i>	:	Chapter 11
	:	
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Hearing: October 27, 2010 at 3:00 p.m.
	:	Objection deadline: October 13, 2010 at 4:00 p.m.
	X	

**MOTION FOR AUTHORIZATION TO ENTER
INTO A PARTICIPATION AGREEMENT**

Advanta Corp. (“*Advanta*”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (the “*Debtors*”), respectfully represent:

Relief Requested

1. Although Advanta believes that the transaction proposed by this motion (the “*Motion*”) is in the ordinary course of its business, to provide comfort to its contract

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

counterparties, Advanta hereby seeks, pursuant to section 363 of the Bankruptcy Code, entry of an order, substantially in the form attached hereto as ***Exhibit A***, authorizing Advanta to enter into a participation agreement (the “***Participation Agreement***”), dated September 21, 2010, among Advanta, First Data Resources, LLC (“***FDR***”) and CardWorks Servicing, LLC (“***CardWorks***”) in connection with the transfer of servicing of certain credit card receivables owned by Advanta. Contemporaneously herewith, the Debtors have filed a motion seeking authorization to file the Participation Agreement under seal as ***Exhibit B*** to this Motion.

The Participation Agreement

2. Pursuant to a Receivables Purchase and Servicing Agreement, dated as of June 29, 2005, between Advanta and Advanta Bank Corp. (“***ABC***”), a wholly-owned non-debtor subsidiary of Advanta (as amended from time to time, the “***RPSA***”), and an Asset Purchase and Sale Agreement, dated as of April 27, 2009, between Advanta and ABC (the “***APSA***”), ABC sold on a continuing basis to Advanta all of its right, title, and interest to receivables generated by certain designated business credit card accounts originated by ABC (the “***Receivables***”).² Advanta subsequently assigned some or all of its right, title, and interest to the Receivables to its wholly-owned debtor-subsidiary, Advanta Credit Card Receivables Corp. As further described in the Rosoff Declaration, under the RPSA and APSA, Advanta engaged ABC to service the Receivables (the “***Servicing Functions***”) for a periodic servicing fee.

² Under the RPSA, Receivables include, without limitation, all amounts payable by cardholders, including all amounts advanced to cardholders for purchase and cash usage transactions and balance transfers, periodic rate finance charges, cash advance fees, annual membership fees, annual service charges, late fees, overlimit fees, net interchange, and all other fees, charges, and revenue streams in respect of such amounts advanced. Advanta terminated its obligation to purchase Receivables under the RPSA as of July 16, 2009.

3. Effective March 19, 2010, the Federal Deposit Insurance Corporation (“*FDIC*”) was appointed the receiver of ABC and assumed all of ABC’s deposits and took control over all of ABC’s assets. As a result, Advanta is in the process of transitioning the Servicing Functions from ABC to a third-party servicer. Advanta has entered into new agreements with CardWorks and certain other providers, such as FDR, for the performance of the Servicing Functions (the “*Replacement Servicing Agreements*”). FDR has requested that the Debtors obtain an order from the Court approving the Participation Agreement.

4. Under Advanta’s agreement with CardWorks, CardWorks provides certain customer service, collection services, and client services in relation to the Receivables.

5. Under the Participation Agreement, FDR will provide certain data processing and related services in connection with CardWork’s credit card servicing operations. FDR will provide its processing services pursuant to a “participation agreement” with Advanta, pursuant to which Advanta participates in CardWorks’ master agreement with FDR. Pursuant to Advanta’s servicing agreement with CardWorks, CardWorks is responsible for paying FDR’s fees under the Participation Agreement and acts as a liaison between Advanta and FDR. However, should CardWorks fail to pay FDR, Advanta would be obligated to pay FDR’s fees under the Participation Agreement. Advanta estimates that the aggregate amount of monthly compensation to be paid by CardWorks pursuant to the Participation Agreement will initially be in the range of \$8,000 - \$10,000 per month, and will gradually decline as the number of gross active accounts declines.

**Good Business Reasons Support Advanta’s
Entry Into the Participation Agreement**

6. Advanta believes that the negotiation and execution of servicing agreements to transfer the Servicing Functions are among the day-to-day activities relating to

the management of its credit card receivables portfolio, and, therefore, Advanta is authorized to engage in such transactions in the ordinary course of its business pursuant to section 363(c)(1) of the Bankruptcy Code.³ However, FDR has conditioned the effectiveness of the Participation Agreement upon this Court's approval of that contract. Therefore, out of an abundance of caution, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, Advanta requests authorization to enter into Participation Agreement in order to assure FDR that Advanta is authorized to enter into and perform under that contract.

7. Section 363(b)(1) provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a good business reason that justifies such action. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (stating that a court will “defer to the trustee’s judgment so long as there is a legitimate business justification” (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991))); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.* and requiring good faith); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where

³ Section 363(c)(1) of the Bankruptcy Code provides that, unless the court orders otherwise, a debtor authorized to operate under section 1108 of the Bankruptcy Code “may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.”

sound business reasons supported the sale); *In re Allegheny Int'l*, 117 B.R. 171 (W.D. Pa. 1990) (affirming bankruptcy court order allowing debtor to enter into financing arrangement because debtor provided good business reason for use of estate property pursuant to section 363(b)). Section 105(a) of the Bankruptcy Code, in turn, authorizes this Court to “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).

8. To the extent that entry into the Participation Agreement is not in the ordinary course of Advanta’s business, good business reasons support Advanta’s entry into the Participation Agreement. The Receivables generate proceeds for the pool of assets available for creditor distribution, and therefore, further the Debtors’ liquidation efforts. Entry into the Participation Agreement will ensure that the Servicing Functions for the Receivables continue uninterrupted, thereby avoiding any loss to the Debtors’ estates from an unforeseen termination of the Servicing Functions. In addition, Advanta believes that the Participation Agreement and the other Replacement Servicing Agreements are comparable in terms of cost and service to the RPSA⁴ and APSA, and are appropriate under the circumstances. For the foregoing reasons, Advanta believes that entry into the Participation Agreement is necessary and appropriate, and in the best interests of its estate.

9. In addition, the statutory committee of unsecured creditors appointed in these chapter 11 cases (the “**Creditors’ Committee**”) have no objection to the Motion and its professionals actively participated in the negotiation of the Participation Agreement.

⁴ Each of the Replacement Servicing Agreements include indemnification provisions with respect to a breach by Advanta of its obligations thereunder. Although such indemnification provisions are absent from the RPSA, Advanta believes that the indemnification provisions in the Servicing Agreements are commercially reasonable and appropriately limited in scope.

Jurisdiction

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

Notice

11. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Creditors' Committee; (iii) Bank of New York Mellon as trustee under the Investment Note Indenture (as defined in the Rosoff Declaration); (iv) Law Debenture Trust Company of New York as successor trustee under the 8.99% Indenture (as defined in the Rosoff Declaration); (v) counterparties to the Servicing Agreements; (vi) counsel for the FDIC, as receiver of ABC; and (vii) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "*Notice Parties*"). Advanta respectfully submits that no further notice of this Motion is required.

No Previous Request

12. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, Advanta respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: September 29, 2010
Wilmington, Delaware

/s/ Zachary I. Shapiro

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Paul N. Heath (No. 3704)
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ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

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

	X	
	:	
<i>In re</i>	:	Chapter 11
	:	
ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Hearing: October 27, 2010 at 3:00 p.m. (EDT)
	:	Obj. Deadline: October 13, 2010 at 4:00 p.m. (EDT)

NOTICE OF MOTION AND HEARING

Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “***Debtors***”), today, filed the **Motion for Authorization to Enter Into a Participation Agreement** (the “***Motion***”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “***Bankruptcy Court***”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for the Debtors on or before **October 13, 2010 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the Bankruptcy

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), 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).

Court, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **October 27, 2010 at 3:00 p.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 29, 2010
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro

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Paul N. Heath (No. 3704)
Chun I. Jang (No. 4790)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X	:	
<i>In re</i>	:	Chapter 11
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ADVANTA CORP., <i>et al.</i> ,	:	Case No. 09-13931 (KJC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
-----X		Re: D.I. __

**ORDER AUTHORIZING ADVANTA'S
ENTRY INTO THE PARTICIPATION AGREEMENT**

Upon the motion, dated September 29, 2010 (the “*Motion*”) of Advanta Corp. (“*Advanta*”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession, for an order pursuant to sections 105(a) and 363(b)(1) of title 11 of the Bankruptcy Code² authorizing Advanta to enter into the Participation Agreement, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and it appearing that no

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² Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

other or further notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of Advanta, its creditors and its estate; and the Court having determined that the transactions set forth in the Motion represent an exercise of Advanta's sound business judgment; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court, and upon the record of the hearing on the Motion, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that, pursuant to section 363 of the Bankruptcy Code, Advanta is authorized to enter into the Participation Agreement and perform thereunder; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2010
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B
Participation Agreement

[Filed Under Seal]