

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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)	
In the Matter of)	
)	
ADVANTA BANK)	NOTICE OF CHARGES
WILMINGTON, DELAWARE)	AND OF HEARING
)	
(INSURED STATE NONMEMBER BANK))	FDIC-09-724c&b
)	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) having reasonable cause to believe that, as a result of the filing of a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code by Advanta Corp., Spring House, Pennsylvania (“Advanta”), the parent company of Advanta Bank, Wilmington, Delaware (“Bank”), the adverse financial condition of the Bank’s affiliate, Advanta Bank Corp., the lack of independence of the board of directors of the Bank, and the FDIC’s inability to obtain answers from the Bank with respect to certain Bank transactions, there is a substantial threat that the Bank has engaged in or will engage in violations of law and/or unsafe or unsound banking practices, and that unless restrained, will engage in such practices in conducting the business of the Bank, hereby institutes this proceeding for the purpose of determining whether an appropriate order should be issued against the Bank under the provisions of section 8(b) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(b). The FDIC hereby issues this NOTICE OF CHARGES AND OF HEARING (“NOTICE”) pursuant to the provisions of the Act and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, and alleges as follows:

Jurisdiction and Definitions

1. The Bank is a corporation existing and doing business under the laws of the State of Delaware and has its principal place of business at Wilmington, Delaware. At all times pertinent to this proceeding, the Bank is and has been a State nonmember bank within the meaning of section 3(e)(2) of the Act, 12 U.S.C. § 1813(e)(2), an insured depository institution within the meaning of section 3(c)(2) of the Act, 12 U.S.C. § 1813(c)(2), and subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III (“Rules”), and the laws of the State of Delaware.

2. The FDIC has jurisdiction over the Bank and the subject matter of this proceeding.

3. Advanta is a corporation existing and doing business under the laws of the State of Delaware and has its principal place of business in Spring House, Pennsylvania. At all times pertinent to this proceeding, the Bank is and has been a second tier subsidiary of, and indirectly owned and controlled by, Advanta. The exclusive activity of the Bank is maintaining transaction deposit accounts for Advanta and its affiliates.

4. Advanta Bank Corp. (“ABC”) is a corporation existing and doing business under the laws of the State of Utah and has its principal place of business at Draper, Utah. At all times pertinent to this proceeding, ABC is and has been a State nonmember bank within the meaning of section 3(e)(2) of the Act, 12 U.S.C. § 1813(e)(2), an insured depository institution within the meaning of section 3(c)(2) of the Act, 12 U.S.C. § 1813(c)(2), and subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, and the laws of the State of Utah. ABC is a wholly-owned subsidiary of Advanta and an “affiliate” of the Bank, as defined under sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1. Prior to 2009,

ABC was one of the largest issuers of credit cards to small businesses and business professionals.

FINANCIAL CONDITION OF THE BANK

5. As reflected in the Call Report filed by the Bank, as of September 30, 2009:
 - (a) The Bank's reported total deposits equaled \$10,330,000;
 - (b) The Bank's reported total assets equaled \$21,813,000;
 - (c) The Bank's total equity was \$10,912,000;
 - (d) The Bank's year-to-date net income was (\$3,669,000); and
 - (e) The Bank's Tier 1 Capital Ratio was 39.39%.

6. Financial information provided by the Bank, as of November 30, 2009, reflects the following changes:
 - (a) The Bank's reported total deposits equaled \$268,000,
 - (b) The Bank's reported total assets equaled \$9,575,000; and
 - (c) The Bank's total equity was \$9,243,000.

7. As indicated by paragraphs 5 and 6, the Bank had a \$10,062,000 reduction in deposits since September 30, 2009, and a reduction in assets in the amount of \$12,238,000.

FINANCIAL CONDITION OF ABC

8. As reflected in financial information provided by ABC, as of September 30, 2009:
 - (a) ABC's reported total deposits equaled \$2,092,114,000;
 - (b) ABC's reported "total assets" equaled \$2,284,186,000;
 - (c) ABC's total equity was \$95,011,000;
 - (d) ABC's year-to-date net income was (\$315,172,000); and

(e) ABC's Tier 1 Capital Ratio was 3.73%.

FINANCIAL CONDITION OF ADVANTA

9. As reflected in consolidated financial information provided by Advanta, as of September 30, 2009:

- (a) Advanta's reported total assets equaled \$2,497,897,000;
- (b) Advanta's reported total liabilities equaled \$2,465,936,000
- (c) Advanta's total equity was \$31,961,000;
- (d) Advanta's year-to-date net income was (\$482,459,000); and
- (e) Advanta's total equity to total assets ratio was 1.28%.

Deducting Bank and ABC assets and liabilities leaves approximately \$210 million of Advanta-only assets, after adjusting for inter-company accounts, for \$213 million of Advanta-only debt.

10. Advanta's primary business was directly related to its ownership of ABC. On May 11, 2009, Advanta issued a press release advising that it appeared likely that the early amortization of the securitization trust that issued bonds/notes to third parties secured by ABC credit card account receivables would occur. The press release also indicated that as a result of the anticipated early amortization event all credit card accounts originated by ABC would be closed to new transactions. On May 30, 2009, ABC closed all credit card accounts to new charges and ceased issuing credit cards.

11. On November 8, 2009, without prior notice to the FDIC, Advanta and several Advanta subsidiaries filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. In the documents filed, William Rosoff, President and Vice Chairman of the Board of Directors of Advanta, stated that while Advanta had sufficient cash and cash

equivalents, almost \$100 million, to fund operations for the short term, it did not have sufficient resources to fund operations and debt obligations over an extended time period.

THE BANK'S BOARD OF DIRECTORS LACKS INDEPENDENCE

12. The Bank is engaged in unsafe and unsound banking practices in that the Bank's board of directors ("Bank Board") lacks necessary independence from the Bank's bankrupt parent holding company that is in need of capital.

13. As of November 23, 2009, the Bank Board consists of six directors. Four of the directors, Mr. Rosoff, Dennis Alter ("Mr. Alter"), Thomas Costello ("Mr. Costello"), and Philip Browne ("Mr. Browne") (collectively, the "Inside Directors"), are executive officers and/or directors of Advanta.

14. Mr. Rosoff is the Vice Chairman of the Bank Board. Since 1999, he has been the President of Advanta and the Vice Chairman of Advanta's board of directors ("Advanta Board").

15. Mr. Alter is the Chairman of the Bank Board and the President and Chief Executive Officer of the Bank. Since 1985, he has served as the Chief Executive Officer of Advanta and the Chairman of the Advanta Board. Mr. Alter owns 40% of Advanta's shares.

16. Mr. Costello is a director on the Bank Board. He is also a director on the Advanta Board, and Chairman of its Audit Committee.

17. In addition to serving as a director of the Bank Board, Mr. Browne is the Chief Financial Officer of the Bank. Since 1998, Mr. Browne has also served as the Senior Vice President and Chief Financial Officer of Advanta.

18. Prior to November 23, 2009, the Bank Board included a seventh director, John Moore ("Mr. Moore"), who served as an officer of a subsidiary of Advanta, but had not served as an officer or director of Advanta. Without explanation, on or about November 23, Jay Dubow,

General Counsel and Senior Vice President of Advanta (“Mr. Dubow”), informed Mr. Moore that he no longer was a director of the Bank.

19. The Inside Directors play dominant, decision-making roles at the Bank.

**THE BANK’S INSIDE DIRECTORS HAVE CONFLICTING INTERESTS AND
DIVIDED LOYALTIES WHEN DIRECTING THE AFFAIRS OF ADVANTA’S BANK
SUBSIDIARIES**

20. The Bank is engaged in unsafe and unsound banking practices in that the Bank’s Inside Directors have conflicting interests and divided loyalties, which they have demonstrated when directing the affairs of the Bank and/or ABC, and place the priorities of bankrupt Advanta above the priorities of the Bank and ABC.

21. Pursuant to a stipulation and consent agreement executed by ABC’s board of directors on June 30, 2009, including Mr. Browne and Mr. Alter, the FDIC issued a cease and desist order to ABC that required that ABC at all times during the term of the order maintain its Tier 1 Leverage Capital Ratio at a level of no less than 5 percent and its Total Risk-Based Capital ratio equal to or greater than 10 percent.

22. In accordance with the cease and desist order, ABC advised FDIC that its capital ratio was 3.73% as of September 30, 2009. The FDIC scheduled a meeting with ABC on October 27, 2009, to discuss ABC’s failure to comply with the capital requirements of the June 30 order. Mr. Rosoff, who was Vice Chairman of ABC, as well as president and Vice Chairman of Advanta, advised the FDIC that Advanta would not provide additional capital to ABC. Mr. Rosoff proposed that the FDIC put ABC into receivership as soon as possible. The FDIC provided Mr. Rosoff, in his role as Vice Chairman of ABC, with a Prompt Corrective Action Notice advising ABC that, among other things, ABC must submit a capital restoration plan to the New York Regional Office (NYRO) Regional Director. ABC has failed to submit the capital

restoration plan.

23. After Advanta's filing of the above-referenced bankruptcy petition, Mr. Rosoff requested to meet with the FDIC. On a November 10, 2009 telephone conference among Mr. Rosoff, Mr. Dubow, and the FDIC, Mr. Rosoff stated that he would "turn over the keys" of ABC to the FDIC and that the FDIC "can have it all this minute."

24. On November 13, 2009, the FDIC met with Mr. Rosoff, Mr. Browne, Mr. Dubow, and bank consultant Michael Piracci ("Mr. Piracci"). Mr. Rosoff advised the FDIC that, due to his responsibilities to Advanta and its shareholders, he could not provide the FDIC or state regulators with prior notice of the Chapter 11 bankruptcy because he did not want bank regulators to interfere with the bankruptcy filing. Mr. Rosoff stated that Advanta's directors, including himself, have a duty to preserve Advanta's assets for the benefit of the shareholders and creditors of Advanta and that Advanta filed for bankruptcy protection to protect Advanta's noteholders and other stakeholders.

25. At the meeting referenced in paragraph 24, Mr. Rosoff stated that Advanta would disaffirm a tax-sharing agreement with ABC that could have resulted in a \$65 million payment to ABC. Mr. Rosoff stated that ABC had zero chance of getting the payment. He also advised the FDIC that due to the lack of payment, ABC would have to charge-off the \$65 million tax receivable, which would bring ABC's capital ratio to 2 percent or slightly less. With respect to certain payments that Mr. Rosoff wanted ABC to make to Advanta, Mr. Rosoff stated that ABC must do "the right thing" for its shareholder. Mr. Rosoff again suggested that the FDIC place ABC in receivership and raised the possibility that, with ABC in receivership, Advanta could contract with the FDIC to service the credit card accounts and collect related receivables.

26. Advanta management who also are or have been directors and/or executive

officers of the Bank and ABC, have stated on several occasions that their most immediate concern is to preserve Advanta's cash to pay off the \$130 million of senior retail investment notes outstanding.

**FAILURE TO MAINTAIN BOOKS AND RECORDS RESULTING IN FDIC'S
INABILITY TO DETERMINE FINANCIAL CONDITION OF BANK OR DETAILS OF
CERTAIN TRANSACTIONS**

27. The Bank has engaged in unsafe and unsound banking practices in that the Bank failed to maintain books and records which would enable the FDIC, through its normal supervisory process, to determine the financial condition of the Bank and to determine the details or purposes of numerous transactions that have a material effect on the condition of the Bank, as evidenced by paragraphs 28 through 30.

28. During an offsite review of the Bank, an FDIC examiner noted that between June 30, 2009 and September 30, 2009, the Bank reduced its other liabilities by \$5.3 million and booked a tax expense/provision of \$2.6 million. The transactions are unusual in regard to the size and nature of the Bank's activities.

29. On November 23, 2009, the FDIC examiner asked the Bank's Senior Executive Officer, Lee Preston ("Mr. Preston"), to explain the above-referenced tax expense and reduction in liabilities, but Mr. Preston could not provide any explanation. Mr. Preston stated that it involved a tax-sharing agreement with Advanta and any information related to it would have to come from Mr. Browne, as a result of his knowledge as Chief Financial Officer of the Advanta. Despite repeated requests by the FDIC, the Bank did not provide information regarding certain financial issues, including purported tax obligations by the Bank to Advanta, until the morning of December 10, 2009 – the day before a meeting scheduled by NYRO with the full Bank

Board. Due to the complexity of the information provided, which involved tax matters, further clarification was needed. The NYRO is still reviewing the appropriateness of the transaction.

30. In addition to the records referenced in paragraph 29, the FDIC examiner repeatedly asked the Bank for a financial statement reflecting its status as of November 30, 2009 – post-Advanta’s bankruptcy filing. Not until the morning of December 10, 2009 – the day before a meeting scheduled by NYRO with the Bank Board – was the examiner provided with information. The information provided by the Bank indicates a reduction in cash held by the Bank in the amount of \$9,954,468 since September 30, 2009.

**THE INSIDE DIRECTORS HAVE HINDERED THE FDIC’S EFFORTS TO MONITOR
THE FINANCIAL CONDITION OF THE BANK AND PROTECT THE DEPOSIT
INSURANCE FUND**

31. In light of the Advanta bankruptcy and the Bank’s interlocking management with Advanta, the NYRO, by letter dated November 19, 2009, proposed that the Bank Board stipulate to a Consent Order (“Order”) pursuant to section 8(b)(1) of the Act, 12 U.S.C. § 1818(b)(1), in order to protect the Bank by restricting transactions with Advanta and its affiliates and prohibiting the payment of dividends without the prior approval of the Regional Director of the NYRO.

32. Mr. Moore, as a director of the Bank, advised FDIC that he believed that the Bank’s Board should stipulate to the Order. As described in paragraph 18, Mr. Moore was removed from the Bank’s Board soon afterwards.

33. During a telephone conference with Mr. Dubow and Mr. Piracci on November 24, 2009, Mr. Dubow advised the NYRO that pursuant to Bankruptcy Code, the Bank could not consent to the Order without the prior consent of Advanta’s Creditors’ Committee or the Bankruptcy Court.

34. FDIC bankruptcy counsel advised NYRO that consent of Advanta's creditors or the U.S. Bankruptcy Court was not necessary for the Bank Board to consent to the issuance of the Order.

35. The Bank does not have legal staff. In order to determine the legal basis for the advice provided by counsel to the Bank Board, on December 3, 2009, NYRO counsel requested that Mr. Dubow provide the name and telephone number of the outside counsel who provided the Bank Board with advice regarding stipulation. Mr. Dubow refused and stated that bankruptcy counsel had not provided advice to the Bank Board.

36. Through letters and emails sent on November 25, 2009, the NYRO proposed a discussion of the Order with the Bank Board on November 30, 2009. By email dated November 27, 2009, Mr. Rosoff advised the NYRO that the Bank Board had already determined that it would not stipulate to the Order and that the Bank Board was unavailable to meet with the FDIC until December 10, 2009.

37. Advanta, as not only the parent of the Bank, but with dominant interlocking management, has the ability to exert influence over the Bank.

38. By reason of the allegations in paragraphs 1 through 37, and given Advanta's financial condition and control over the Bank, the Bank is at risk of engaging in unsafe or unsound banking practices including, without limitation, the following:

- (a) engaging in transactions with Advanta or any of its affiliates which may have a material detrimental effect on the Bank;
- (b) providing Advanta with distributions of cash that would reduce the Bank's capital level;
- (c) failing to maintain books and records which would enable the FDIC,

through the normal supervisory process, to determine the financial condition of the Bank and to determine the details or purposes of numerous transactions that have a material effect on the condition of the Bank; and

- (d) having an inadequate number of outside Directors on the Bank Board in order to counter Inside Directors whose conflicts of interest may have a material detrimental effect on the Bank.

Proceeding

39. Notice is hereby given that a hearing will be held in Wilmington, Delaware, commencing 60 days from the date of service of this NOTICE on the Bank, or on such other date and such other place as may be set by the Administrative Law Judge appointed to hear this matter, for the purpose of taking evidence on the charges herein before specified in order to determine whether an appropriate order should be issued under the Act requiring the Bank: (1) to cease and desist from unsafe and unsound banking practices herein specified; and/or (2) to take affirmative action to correct the conditions resulting from such practices.

40. The hearing will be held before an Administrative Law Judge to be assigned by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in compliance with the provisions of the Act and the FDIC Rules of Practice and Procedure.

41. The Bank is hereby directed to file an Answer to this NOTICE within 20 days from the date of service of this NOTICE on the Bank, as provided by section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. The original and one copy of all papers to be filed or served in this proceeding shall be filed with the Office of Financial

Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, pursuant to section 308.10 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.10.

The Bank is encouraged to file any Answer electronically with the Office of Financial Adjudication at ofia@fdic.gov.

42. Copies of all papers filed or served in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; A. T. Dill, III, Assistant General Counsel, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; and Stephen L. Rodgers, Acting Regional Counsel, Federal Deposit Insurance Corporation, New York Regional Office, 20 Exchange Place, New York, New York 10005.

Pursuant to delegated authority.

Dated at Washington, D.C., this 16th day of December, 2009.

/s/

Christopher J. Spoth
Senior Deputy Director
Division of Supervision and
Consumer Protection