

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,

Debtor.

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) Case No. 20-[10322]
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) Chapter 11
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MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING, BUT NOT DIRECTING, THE DIOCESE TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS, (II) MAINTAIN INVESTMENT ACCOUNTS AND PRACTICES, AND (III) CONTINUE USING PAYMENT CARDS, AND (B) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

The Diocese of Buffalo, N.Y. (the “Diocese”), by and through its undersigned counsel, hereby moves the Court (this “Motion”) for entry of interim and final orders, substantially in the form of the proposed orders attached hereto as *Exhibits A* and *B*, respectively, (a) authorizing, but not directing, the Diocese to (i) continue using its existing bank accounts, banking practices and business forms, (ii) maintain its prepetition investment accounts and practices, and (iii) continue to use certain payment cards, and (b) granting limited relief from the requirements of section 345(b) of the Bankruptcy Code. In support of this Motion, the Diocese respectfully represents as follows:

BACKGROUND

1. On February 28, 2020 (the “Petition Date”), the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of New York (the “Court”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”). The Diocese continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for a trustee or

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examiner has been made in this Chapter 11 Case, and as of the date of this filing, no official committees have been appointed or designated.

2. Information regarding the Diocese's history, business operations and structure, and the events leading up to this Chapter 11 Case is set forth in the *Affidavit of Rev. Peter J. Karalus Regarding Structure and Pre-Filing History of The Diocese of Buffalo and in Support of the Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Charles Mendolera Regarding the Diocese's Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
6. The statutory and rule-based predicates for the relief requested herein are sections 105(a), 363(c), 345(b), 364(a), 503(b)(1), 1107(a) and 1108 of the Bankruptcy Code, and Rules 4001(c), 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").
7. The Diocese does not, by filing its petition for relief and other documents in this Chapter 11 Case, waive any of its rights under any applicable law, including, without limitation, the Code of Canon law, the First Amendment of the United States Constitution, the Constitution for the State of New York, the Religious Freedom Restoration Act, the church autonomy doctrine, charitable trust law, New York trust law, and the rights to object to disclosure of information and to contend that certain assets which may be discussed in the Motion are not property of the estate.

RELIEF REQUESTED

8. By this Motion, the Diocese respectfully requests that the Court enter interim and final orders authorizing the Diocese (i) continue to use, with the same account numbers, its existing Bank Accounts (as defined below), (ii) treat the Bank Accounts as debtor-in-possession accounts; (iii) continue to use, in their present form, all correspondence and business forms (including, without limitation, letterhead, purchase orders and invoices) and other documents relating to its Bank Accounts existing immediately before the Petition Date, without reference to its status as a debtor-in-possession; (iv) maintain its prepetition investment practices, and (v) continue use of certain payment cards.

9. The Diocese further requests that the Court authorize all banks and institutions at which any of the Bank Accounts are maintained (collectively, the “Banks”) to continue to maintain, service and administer the Bank Accounts, including charging any undisputed, outstanding service charges owed to the Banks on the Petition Date, and that each of the Banks be authorized and directed to receive, process, honor, and pay (i) all post-petition checks, drafts, wire transfers and other electronic payment requests (to the extent of funds on deposit) together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.

I. Bank Accounts

10. In the ordinary course of business, the Diocese utilizes the following accounts to receive, hold and distribute funds (collectively, the “Bank Accounts”), each of which is described in more detail below:

Account name	Depository Institution	Last four digits of account number
Operating Account	M&T Bank	1200

Diocesan Purchasing Division Account (“DPD Account”)	M&T Bank	5004
National Collections Account	M&T Bank	6516
Catholic Partnership Health Account	M&T Bank	1230
Disbursement Account	HSBC Bank	9447
Dental Account	HSBC Bank	7226
Payroll Accounts	HSBC Bank	4140 and 4174
Charitable Gift Annuities Account (“CGA Payments Account”)	Key Bank	5423
Self-Insurance Fund (“SIP Account”)	Bank of America	2016
HRA Account	M&T Bank	1539
FSA Account	M&T Bank	1547
Department Bank Accounts	Various	See Exhibit C

11. *Operating Account (xx1200)*. The Operating Account is the Diocese’s primary account and is used to hold most of the Diocese’s cash and to transfer funds to other Bank Accounts as necessary.

12. *DPD Account (xx5004)*. The DPD Account is used by the Diocese’s purchasing division to procure goods and services on a collective basis for the Diocese and other Catholic institutions. By consolidating its purchasing efforts with parishes, schools and other Catholic entities, the Diocese leverages the buying power of all participants to obtain better pricing and other terms offered by vendors for volume purchases. Among other things, the Diocese uses funds in the DPD Account to purchase audio-visual equipment, cafeteria and kitchen supplies, apparel and vestments, office supplies and equipment, and various other church ware and religious goods, and then bills each parish, school or other purchaser for their respective portion of the purchase price.

13. *National Collections Account (xx6516)*. The National Collections Account is used by the Diocese to hold monies collected from second offertory collections or other appeals for the purpose of supporting national Catholic initiatives and which are payable by the Diocese to the United States Conference of Catholic Bishops. The Code of Canon Law mandates the fundamental

principle regarding donor intent. The canonical principle stipulates that “offerings given by the faithful for a certain purpose can be applied only for that same purpose.” *See* Canon 1284 § 3.

14. *Catholic Partnership Health Account (xx1230)*. The Catholic Partnership Health Account holds segregated funds collected from participants in the Diocese’s Self-Insurance Health Care Plan (“SIHP”) and used to pay health insurance claims, administrative costs, stop-loss premiums and other costs related to providing the SIHP.

15. *Disbursement Account (xx9447)*. The Disbursement Account is used to pay the Diocese’s accounts payable to vendors and service providers for goods and services procured outside of the purchasing department.

16. *Dental Account (xx7226)*. The Dental Account is used to fund claims for dental insurance coverage for the Diocese’s employees and retired priests.

17. *Payroll Accounts (xx4140 and xx4174)*. The Payroll Accounts are used to fund payroll, benefits, and other payments to employees of the Diocese and retired priests.

18. *CGA Payments Account (xx5423)*. The CGA Payments Account is part of the Diocese’s charitable gift annuity program, which is described in greater detail below. From time to time, and in accordance with the requirements of the annuity program, the Diocese liquidates securities held in the CGA Investment Account (defined below). The proceeds of such liquidation are deposited into to the CGA Payments Account and used to make payments to annuitants.

19. *SIP Account (xx2016)*. The SIP Account is used in connection with the Diocese’s self-insurance program (“SIP”) to pay covered property, casualty, workers compensation, automobile and general liability claims, as well as to make payments to carriers for the Diocese’s excess insurance policies. The Diocese has by separate motion requested authorization to continue

the SIP in the ordinary course of business and seeks to continue the use of this account in connection with that request.

20. *HRA Account (xx 1539)*. The HRA Account is used to fund contributions to health reimbursement accounts for Diocesan employees who are enrolled in the high deductible health plan.

21. *FSA Account (xx1547)*. The FSA Account is funded entirely through employee contributions via payroll deduction and is used to fund those employees' flexible spending accounts.

22. *Department Bank Accounts*. The Diocese maintains a number of low-balance accounts which are utilized by various departments within the Diocese for specific purposes related to their respective departmental functions. A full list of these accounts is attached hereto as *Exhibit C*.

II. Investment Accounts

23. In addition to its Bank Accounts, the Diocese maintains the following investment accounts in the ordinary course of its business (collectively, the "Investment Accounts"):

24. *St. Joseph Investment Fund, Inc.* The Diocese's non-cash investments are held primarily in an account with St. Joseph Investment Fund, Inc. ("SJIF"). SJIF is a not-for-profit corporation formed in 2006 to maintain pooled investments on behalf of the Diocese and various separately incorporated Catholic entities in conformity with Canon Law and the New York State Prudent Management of Institutional Funds Act. SJIF's affairs are governed by its Certificate of Incorporation and By-laws. As SJIF is a separate and distinct legal entity, the debts and liabilities of SJIF lie solely with SJIF and are not guaranteed or payable by the Roman Catholic Church, the

Diocese or any other person or entity. Similarly, the debts and liabilities of the Roman Catholic Church and the Diocese are solely their own and are not guaranteed or payable by SJIF.

25. SJIF's purpose is to maximize investment returns through economies of scale and to provide participants with the opportunity to invest in harmony with the teaching and beliefs of the Roman Catholic Church. SJIF provides for administration and protection of temporal goods, as required by Canon Law. SJIF is exempted from certain federal and state securities laws pursuant to the Philanthropy Protection Act of 1995. *See, e.g.*, 15 U.S.C. §§ 77c(a)(4), 78c(a)(12)(A)(v), 80a-3(c)(10), 80a-3a.

26. The participants in SJIF include: the Diocese, parishes, cemeteries, and other Catholic entities. As of December 31, 2019, SJIF had approximately \$147 million in total assets under management, the majority of which constitute investments by entities other than the Diocese. Of the approximately \$21.8 million in Diocesan funds under management, approximately \$9.6 million is specifically designated for the payment of retired priest medical benefits, for seminarian programs, and to support the Diocese's obligations under its self-insurance program, and approximately \$12.1 million is unrestricted and available for use at the discretion of the Diocese.

27. SJIF manages both a short-term fund which seeks to provide current income while maintaining liquidity and which invests primarily in investment grade short term debt securities and high quality money market instruments, as well as a long-term fund which seeks to provide a blend of capital growth and current income by investing assets in a blend of equity securities, fixed income securities, institutional commingled mutual funds, and hedge funds of funds, with the goal of achieving the following allocation targets:

Asset Class	Target %	Permissible Ranges	Target Benchmark
Equity	47%	37 - 57%	
Domestic Large Cap	17%	12 - 22%	S&P 500
Domestic Small Cap	7%	4 - 10%	S&P 600
International Equities	23%	17 - 29%	Various non-US equity market benchmarks
Fixed	26%	10 - 35%	
Domestic Core	13%	8 - 25%	Barclays Aggregate
Emerging Market	3%	0 - 6%	Local Currency Sovereign EM Debt
Global Multi-Sector	5%	0 - 8%	S&P/Citigroup WGBI
Absolute Return	5%	0 - 8%	Barclays Aggregate
Alternatives	17%	12 - 22%	
REITs	3.5%	0 - 7%	FTSE NAREIT Equity REIT
Natural Resource Equity	3.5%	0 - 7%	S&P Global Natural Resources
Hedge Fund of Funds	10%	7 - 13%	HFRI Hedge Fund of Funds Index
Multi-Asset Managers	10%	5 - 15%	
Global Asset Allocation	10%	5 - 15%	50%/50% Global Stocks/Bonds

28. SJIF is managed by its board of directors, and investment oversight activities are delegated to the board's investment committee. The current members of the board, together with information regarding their qualifications, are as follows (*members of the investment committee are denoted in bold*):

- **Jennifer C. Balbach**, Chair; Partner, Summer Street Capital Partners, LLC; BA, Psychology, Harvard College, Cambridge, MA; MBA, Tuck School of Business at Dartmouth. Ms. Balbach has been a manager of a private equity fund for 19 years and serves on 4 other boards in the Buffalo area.
- **David P. Bauer**; National Fuel Gas Supply Corporation; BA, Accounting, Boston College, Boston, MA. Mr. Bauer has been employed by National Fuel for ten years and is a member of its Retirement Committee, which oversees the trust investments of National Fuel's various retirement benefit plans. Previously employed as a Senior Manager at PricewaterhouseCoopers. He serves on 2 other boards in the Buffalo area.
- **Patrick Bohan**; Advisor and member of the Leadership Group at Dopkins Wealth Management in Buffalo, NY. He is also a board member of the Leadership Council of The Massachusetts General Hospital Cancer Center. He has a BA in International Relations from Canisius College and over 20 years in the investment and financial industry. Additionally, he is an active volunteer in the community and serves on another outside investment board.

- **Eileen C. Crotty**; Chief Financial Officer of Hodgson Russ LLP, B.S. Accounting from Canisius College. She formerly served on the Audit Committee of The Diocese of Buffalo, N.Y. She currently serves on the Canisius College Council on Accountancy, of which she was past chair.
- **Andrew W. Dorn Jr.**; Partner, Energy Solutions Consortium, LLC.; BS State University of New York at Buffalo; MBA, Canisius College, Buffalo, New York. Past President and CEO of the Greater Buffalo Savings Bank and the Jamestown Savings Bank. Currently, a Director of Financial Institutions, Inc. and the Western New York Foundation. Past Chair of D'Youville College and member of the investment committees of Sisters of Charity Hospital in Buffalo, NY; D'Youville College, St. Joseph's Collegiate Institute and the Northern Chautauqua Community Foundation.
- **Carrie B. Frank**; Healthcare Executive; B.S., Accounting from Canisius College, Buffalo, NY. Mrs. Frank held leadership positions in various healthcare delivery and financial capacities in her 36-year professional career. Former Vice President at Excellus Health Plan and CFO and COO of Buffalo General and Kaleida Health. Mrs. Frank currently serves on several volunteer boards and on two other investment committees.
- **Sister Dorothy Mueller**; Copywriter and Donor Relations Coordinator for Our Lady of Victory Homes of Charity, is a member of the Stella Niagara Franciscans; BS in Education from Rosary Hill/Daemen College; MS in Education from Xavier University, Cincinnati, Ohio; Sister was an educator, served her religious community as Finance Director for 20 years and Provincial Minister for 8 years. She currently serves as a member of the Board of Directors for Daemen College and chairs its Audit Committee.
- **Edward P. Schneider**; Executive Director, University at Buffalo Foundation, Inc. (1976-Present); B.S., Accounting, Canisius College, Buffalo NY, 1974; MBA, State University of New York at Buffalo, 1980; currently director of 2 community not-for-profit organizations and investment committee member for 4 other organizations.
- **Edward F. Walsh, Jr.**; President and Chief Operating Officer, Walsh Duffield Companies, Inc.; BA (American Studies) Williams College, Williamstown, MA, 1976; Mr. Walsh has been employed in the insurance industry since 1977. Mr. Walsh is currently a director or trustee of 7 community human service organizations and foundations.
- **Lee C. Wortham**; Chief Operating Officer, Barrantys, LLC; BS Canisius College, Buffalo, NY; MBA, New York Institute of Technology, Westbury, NY. Mr. Wortham has over 35 years of experience in the financial services industry. Mr. Wortham is Chairman of the Roswell Park Alliance Foundation, Vice Chairman of Evans Bancorp, Inc., serves on the Board of the Patrick P. Lee Foundation and is a

member of the Canisius College Board of Trustees where he is Chair of the Investment Committee.

29. SJIF retains multiple investment managers to provide investment advice as to appropriate investments and to manage various portfolios of securities. The investment managers are selected by the Investment Committee and approved by the Board of Directors. All investment managers are registered with the Securities and Exchange Commission as “investment advisers” pursuant to the Investment Advisers Act of 1940. The performance of investment managers is reviewed and evaluated quarterly.

30. NEPC, LLC (“NEPC”) has been engaged as an independent consultant to provide consultant services with respect to investment policy development and risk control, asset allocation strategy, investment manager searches, and investment performance analysis. NEPC consultants meet quarterly with the Investment Committee to review performance trends and investment market projections.

31. Custody services for SJIF are provided by US Bank, St. Louis, Missouri for separately managed portfolios. Custody services for multi-investor funds held by SJIF are provided by various custodians, including Bank of New York Mellon, The Northern Trust Co., Deutsche Bank Trust Co., and Citco.

32. The Diocese and SJIF have entered into an administrative contract pursuant to which the Diocese supplies SJIF with the services of certain of its employees to assist in maintaining participant and accounting records relating to the funds, and SJIF reimburses the Diocese for such services.

33. *CGA Investment Account.* The Diocese maintains a charitable gift annuity program pursuant to N.Y. Insurance Law § 1110, which allows the Diocese to enter into agreements with donors under which the Diocese receives gifts for the benefit of itself and other Catholic entities

in exchange for its agreement to make annuity payments calculated based upon the actuarial projected lifespan of the annuitant. Gifts received through this program are invested in an account (the “CGA Investment Account”) maintained by the Diocese with Christian Brothers Investment Services, Inc. (“CBIS”) and are used to fund quarterly payments to the annuitants during their lifetimes. Upon the death of an annuitant, the remaining corpus of the gift becomes the property of the beneficiary named in the annuity agreement, which can be the Diocese or a parish, school, religious order, or other Catholic entity separate from the Diocese. As of the Petition Date, all of the gifts in the program other than one are designated for a beneficiary other than the Diocese.

34. The Diocese holds a permit, issued by the New York State Department of Financial Services (“DFS”), to run its charitable gift annuity program, and it submits annual reports and it submits annual reports and undergoes periodic audits by DFS with respect to the program. Investments in the CBIS Account are overseen by CBIS in consultation with the Diocese, and are made in accordance with the statutory requirements set forth in the N.Y. Insurance Law.

35. As of the Petition Date, the value of the CGA Investment Account was approximately \$434,216 and the Diocese was administering 24 annuity accounts established by 8 individual annuitants. Annuity payments due under the program amount to approximately \$21,273 annually.

36. *LOC Collateral Account.* As described more fully in the Diocese’s motion to maintain its self-insurance programs filed contemporaneously herewith, the Diocese is self-insured for workers compensation claims. Like most self-insured organizations, the New York Workers Compensation Board (“WCB”) has required that the Diocese post security to cover potential workers compensation liabilities. The Diocese has fulfilled this requirement in part through an irrevocable standby letter of credit (the “WCB LOC”) issued to WCB by M&T Bank on behalf of

the Diocese in the amount of approximately \$4.8 million. The Diocese's repayment obligations to M&T Bank under the WCB LOC are collateralized by a restricted securities account (the "LOC Collateral Account") held with Wilmington Trust, N.A (a subsidiary of M&T Bank). As of the Petition Date the LOC Collateral Account had a market value of approximately 5.1 million.

37. *DOB Brokerage Account.* Lastly, the Diocese maintains a brokerage account at M&T Bank (the "DOB Brokerage Account"). The DOB Brokerage Account does not typically maintain a balance but is used to receive and liquidate securities that may be gifted or bequeathed to the Diocese and other Catholic entities in the Buffalo area.

III. Payment Cards

38. *Prepaid Visa Cards.* The Diocese utilizes 25 PEX Visa Prepaid Cards to manage business expenses for the Diocese and its employees. Those cards are issued through Fifth Third Bank, N.A., and The Bancorp Bank. The PEX Visa Prepaid Cards function similarly to a debit card. The Diocese maintains a deposit in the amount of approximately \$40,000 with Fifth Third Bank and any purchases made with the PEX Visa Prepaid Cards are deducted from the amount on deposit. Periodically, the Diocese will replenish the deposit from its Operating Account.

39. *Gas Cards.* The Diocese has six Exxon Mobile Gas Cards which are used to purchase fuel for Diocesan vehicles and employees. On average, the Diocese incurs less than \$1,000 per month in fuel charges and the balance on the Exxon Mobile Gas Cards are paid in full at the end of each billing cycle in the ordinary course of business and generally costs the Diocese less than \$1,000 a month.

IV. Business Forms

40. In the ordinary course of business, the Diocese uses multiple check types associated with the Bank Accounts. Additionally, the Diocese uses a variety of correspondence and business

forms including, but not limited to, letterhead, purchase orders and invoices. To minimize the expense and disruption to the Diocese's estate associated with developing and/or purchasing entirely new forms, the delay in conducting business prior to obtaining such forms and the confusion of employees, vendors and suppliers, the Diocese seeks authority to continue to use all correspondence and business forms as they existed immediately prior to the Petition Date, without reference to the Diocese's status as debtor-in-possession. The Diocese will use its reasonable best efforts to mark "debtor-in-possession" on business forms as soon as reasonably practicable following the Petition Date.

BASIS FOR RELIEF

I. The Court Should Approve the Diocese's Continued Use of the Bank Accounts, Forms and Banking Practices.

A. The Diocese's Banking Practices and Accounts are Essential to the Diocese's Ongoing Operations and Restructuring Efforts.

41. The Diocese respectfully requests that the Court authorize it to continue using its prepetition Bank Accounts rather than closing them and opening new post-petition accounts. Closing the Diocese's Bank Accounts would cause disruption to the Diocese's operations and fulfillment of its mission. As described above, the Diocese's maintains a sophisticated system of special purpose Bank Accounts in order to facilitate the orderly collection, management and disbursement of funds in the ordinary course of its business. If the Diocese were required to open new accounts as of the Petition Date, it would unnecessarily distract the Diocese's key business office personnel in an office that is already operating at maximum capacity. In addition, changing accounts would also cause disruptions in essential deposit and automated debit activity, potentially leading to loss of revenue, missed payments or overdraws and therefore causing harm to the

Diocese's operations. As a result, the Diocese respectfully submits it is appropriate to maintain its prepetition Bank Accounts and practices.

42. Courts have recognized that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993); *see also In re Cent. Kan. Crude, L.L.C.*, No. 09-13798, 2009 Bankr. LEXIS 5448, at *7 (Bankr. D. Kan. Dec. 3, 2009) (holding that continuation of the debtor's cash management system “without interruption is vital to the efficient and economic administration of this Chapter 11 case”); *In re US Airways, Inc.*, Case No. 04-13819 (Bankr. E.D. Va. Sept. 14, 2004) [Docket No. 105]. As a result, courts have concluded that the requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *In re Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

43. The continued use of the existing Bank Accounts will facilitate the Diocese's transition into this chapter 11 case by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in payment of post-petition debts. The Diocese respectfully submits that parties in interest will not be harmed by the continued maintenance of its Bank Accounts because, with the assistance of professionals, the Diocese has implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date.

B. Strict Adherence to the U.S. Trustee’s Guidelines Would Cause Substantial Disruption to Diocese’s Operations.

44. The U.S. Trustee has promulgated Operating Guidelines and Financial Reporting Requirements for Debtors in Possession and Trustees (the “U.S. Trustee Guidelines”)¹ which purport to require debtors in bankruptcy to: (a) close all existing bank accounts and open new debtor-in-possession accounts; (b) maintain a separate debtor-in-possession account for cash collateral; and (c) obtain checks that bear the designation “debtor in possession,” unless the bankruptcy court orders otherwise. Although they may reflect good practices in many cases, the U.S. Trustee Guidelines do not have the force of law. *See In re Johnson*, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (“[T]he Guidelines themselves cannot require bankruptcy debtors to comply with their provisions because the Guidelines do not carry the force or effect of law.”); *In re Crosby*, 93 B.r. 798, 802-805 (Bankr. S.D. Ga. 1988) (noting that “requirements” established by the United States Trustee are subject to the bankruptcy court’s judicial oversight). Accordingly, bankruptcy courts can and do authorize debtors to deviate from the requirements of the U.S. Trustee Guidelines in appropriate circumstances. The Diocese respectfully submits that this is such an appropriate circumstance and asks that in order to allow it to continue to operate its business in the ordinary course, it should be relieved of strict adherence to the U.S. Trustee Guidelines with respect to the maintenance of its existing Bank Accounts and banking practices.

45. One of the purposes of the U.S. Trustee Guidelines is to provide a clear line of demarcation between prepetition and post-petition claims and payments to help prevent inadvertent payment of prepetition claims, by voiding checks drawn before the Petition Date. As

¹ See https://www.justice.gov/ust-regions-r02/file/region_2_operating_guidelines.pdf/download.

discussed below, the Diocese will ensure through clear record keeping a separation between pre and post-petition financial activity.

46. The Diocese submits that maintaining the existing Bank Accounts will facilitate the Diocese's ability to collect, deposit and account for receipts and pay post-petition bills. Closing the Bank Accounts would require the Diocese to open new accounts and arrange alternative procedures for electronic and manual transfers to and from the Bank Accounts. The result would be a disruption of processing payments, and similarly would disrupt wire transfers, payroll obligations, and post-petition obligations to vendors and other creditors.

47. The Diocese also requests authority to preserve various reporting and accounting mechanisms, such as signatory authorizations and accounting systems central to the maintenance of the Bank Accounts. The interruption or termination of such reporting and accounting mechanisms would undermine the utility of the Bank Accounts. In accordance with existing practices, the Diocese will maintain strict records of all receipts and disbursements from the Bank Accounts during the pendency of this case and will ensure that its records properly distinguish between pre-petition and post-petition transactions and report accordingly to the U.S. Trustee.

48. The Diocese also respectfully submits that maintenance of the Bank Accounts will avoid delays in payments to administrative creditors, ensure a smooth transition into chapter 11, and facilitate the Diocese's efforts to complete this Chapter 11 Case rapidly and successfully. Thus, the Diocese respectfully requests that its existing Bank Accounts be deemed debtor-in-possession accounts and that the maintenance and continued use of those accounts, in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period, be authorized subject only to a prohibition against honoring prepetition checks without specific authorization from this Court.

49. Each of M&T Bank, HSBC Bank USA, N.A., Key Bank, N.A., and Bank of America, N.A. are on the U.S. Trustee's list of authorized depositories.² To the extent the balance of the Diocese's accounts may in some instances exceed FDIC insured limits, the Diocese respectfully submits that the Court should waive any bonding requirement for such accounts pursuant to its powers under section 345(b) of the Bankruptcy Code.

50. Courts in this District and elsewhere within Region 2 have waived the U.S. Trustee Guidelines to allow the continued use of cash management and prepetition bank accounts employed in the ordinary course of the debtor's prepetition business. *See, e.g., In re The Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y., September 13, 2019) [Docket No. 29]; *In re Eight Zero Eight of WNY, Inc.*, Case No. 19-10281 (CLB) (Bankr. W.D.N.Y. Apr. 1, 2019) [Docket No.33]; *In re East Pattern & Model Corp.*, Case No. 18-21309 (PRW) (Bankr. W.D.N.Y. Jan. 25, 2019) [Docket No. 45]; *In re Tonawanda Coke Corporation*, Case No. 18-12156 (MJK) (Bankr. W.D.N.Y. Oct. 19, 2018) [Docket No. 29]; *In re Kallstrand, LLC*, Case No. 17-20008 (PRW) (Bankr. W.D.N.Y. Mar 2, 2017) [Docket No. 23]; *In re Flour City Bagels, LLC*, Case No. 16-20213 (PRW) (Bankr. W.D.N.Y. Mar. 3, 2016) [Docket No. 37]. Likewise, similar relief has also been granted in other diocesan bankruptcies. *See, e.g., In re Archbishop of Agana*, Case No. 19-00010 (Bankr. D. Guam Jan. 25, 2019) [Docket No. 52]; *In re Diocese of Winona-Rochester*, Case No. 18-33707 (Bankr. D. Minn. Dec. 7, 2018) [Docket. No. 47]; *In re Roman Catholic Church of the Archdiocese of Santa Fe*, Case No. 18-13027 (Bankr. D.N.M. Dec. 4, 2018) [Docket No. 30].

² See https://www.justice.gov/ust-regions-r02/file/wdny_dep.pdf/download available at <https://www.justice.gov/ust-regions-r02/region-2-chapter-11-4>.[

51. Strict adherence to the U.S. Trustee Guidelines in this Chapter 11 Case would significantly disrupt the ordinary financial operations of the Diocese, reducing efficiencies and causing unnecessary expense, while providing little benefit to creditors. The Diocese respectfully requests that the Court waive the requirements of the U.S. Trustee Guidelines in this Chapter 11 Case as requested herein.

C. The Diocese Should be Granted Authority to Use Existing Business Forms and Checks Until they are Depleted.

52. To minimize expenses and disruption to the Diocese's chapter 11 estate, the Diocese respectfully requests authority to continue to use all correspondence and business forms (including letterhead, purchase orders, envelopes, charitable solicitation material, invoices and the like) as such forms were in existence immediately before the Petition Date, without reference to the Diocese's status as debtor-in-possession. The Diocese also requests authorization to use the existing check stock without the "debtor-in-possession" label for checks that it manually writes until such check stock runs out. As soon as practicable after the Petition Date, the Diocese will include "debtor-in-possession" on the checks it prints electronically. Upon depletion of the Diocese's check stock and/or business forms stock, the Diocese will obtain new check stock and/or business form stock reflecting its status as a debtor-in-possession.

53. By virtue of the nature and scope of the Diocese's operations and the number of suppliers of goods and services with whom the Diocese transacts on a regular basis, it is important that the Diocese be permitted to continue to use its existing checks and other business forms without alteration or change, except as requested herein. Indeed, because it would appear that parties doing business with the Diocese will be aware of the Diocese's status as debtor-in-possession as a result of the widely publicized nature of this Chapter 11 Case as well as the communications and notice of commencement of this Chapter 11 Case the Diocese intends to

distribute to such parties, changing business forms is unnecessary and would be unduly burdensome. Moreover, if the Diocese is required to change its current business forms, the new forms may cause confusion to the Diocesan employees, vendors and donors. The Diocese also believes that it would be costly and disruptive to cease using all existing forms and to purchase new stationery and business forms. Accordingly, the Diocese seeks a waiver of the U.S. Trustee Guidelines with respect to the continued use of its business forms and checks.

D. The Diocese Should Be Authorized to Continue Using Debit, Wire and ACH Payments.

54. The Diocese requests further relief from adherence to the U.S. Trustee Guidelines to the extent doing so would require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement. Considering the nature of the Diocese's operations, in certain instances, it may be necessary for the Diocese to conduct transactions by debit, wire or ACH Payments and other similar methods, as discussed above. The Diocese maintains accurate records and will be able to properly account for any such transactions. The Diocese, therefore, requests that its Banks be authorized to continue to pay, honor and execute any and all debit instructions, wires and ACH Payments issued and drawn on the Bank Accounts after the Petition Date.

E. The Diocese Should Be Authorized to Honor Certain Prepetition Obligations Related to its Bank Accounts.

55. In accordance with its contractual arrangements with the Banks, the Diocese incurs periodic service charges and other fees, costs, charges and expenses to the Banks in connection with the maintenance of the Bank Accounts (collectively, the "Service Charges"). Payment of the prepetition Service Charges is in the best interests of the Diocese and all parties in interest in this Chapter 11 Case, as it will prevent any disruption to the Bank Accounts. Further, because the

Banks have setoff rights for the Service Charges, payment of prepetition Service Charges should not alter the rights of unsecured creditors in this Chapter 11 Case. Accordingly, by this Motion, the Diocese also seeks authority to pay, at the Diocese's sole discretion, the prepetition Service Charges, if any.

II. The Court Should Authorize the Diocese to Continue to Maintain and Utilize the Investment Accounts, and Cause Exists for Waiving the Investment and Deposit Guidelines of Section 345 of the Bankruptcy Code with Respect to the Investment Accounts.

56. The Diocese respectfully requests authority to continue to its prepetition investment practices and to maintain each of its Investment Accounts in the ordinary course of business.

57. By retaining its prepetition investment practices and Investment Accounts, the Diocese will be able to earn reasonable returns on its investments, as contemplated by section 345(a) of the Bankruptcy Code, without incurring the administrative costs and compliance risk associated with converting its holdings to cash or U.S. Government Securities.

58. Section 345(a) of the Bankruptcy Code provides that a debtor in possession may invest money of the estate "as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). Section 345(b) provides that a debtor's investments should be either federally guaranteed or backed by a bond or collateral securities "*unless the court for cause orders otherwise.*" 11 U.S.C. § 345(b). The Diocese respectfully submits that there is ample cause to waive the section 345(b) investment requirements in this case and respectfully requests that the Court enter an order granting the Motion and waiving compliance with section 345(b) with respect to the Diocese's investments in the Investment Accounts.

59. As an initial matter, to the extent certain investments held in the Investment Accounts are restricted-use endowed funds or are otherwise held by the Diocese in trust, they are

not available to creditors and do not constitute part of the Diocese's bankruptcy estate pursuant to section 541 of the Bankruptcy Code. See, e.g., *Tort Claimants Comm. v. Roman Catholic Archbishop of Portland in Oregon (In re Roman Catholic Archbishop)*, 345 B.R. 686 (Bankr. D. Ore. 2006); *Hunter v. St. Vincent Medical Ctr. (In re Parkview Hosp.)*, 211 B.R. 619 (Bankr. N.D. Ohio 1997).

60. To the extent any of the funds at issue represent property of the Diocese's bankruptcy estate, the Diocese respectfully submits that cause to waive the bonding requirement of section 345(b) nevertheless exists.

61. The last clause of section 345(b), which allows a court to waive compliance "for cause," was added as part of the 1994 amendments to the Bankruptcy Code. As the legislative history makes clear, Congress made this change in order to provide courts with greater flexibility to accommodate large, financially sophisticated debtors for whom prudent investment practices support a deviation from the generally applicable statutory rule:

Section 345 of the Code governs investments of the funds of bankruptcy estates. The purposes is to make sure that the funds of a bankrupt (sic) that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankrupt estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. **While this requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.** This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.* [33 F.3d 294 (3d Cir. 1994)]

HR Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4. 1994); 140 Cong. Rec. H10767 (Oct. 4. 1994) (emphasis added).

62. In the only reported decision addressing what constitutes “cause” for purposes of a section 345(b) waiver, the bankruptcy court for the Middle District of Tennessee identified a number of factors to be considered as part of a “totality of the circumstances inquiry.” *In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). The factors identified by the *Service Merchandise* court were:

- a. The sophistication of the debtor’s business;
- b. The size of the debtor’s business operations;
- c. The amount of the investments involved;
- d. The bank ratings (Moody’s and Standard & Poor) of the financial institutions where the debtor-in-possession funds are held;
- e. The complexity of the case;
- f. The safeguards in place within the debtor’s own business of insuring the safety of the funds;
- g. The debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. The benefit to the debtor;
- i. The harm, if any, to the estate; and
- j. The reasonableness of the debtor’s request for relief from section 345(b) requirements in light of the overall circumstances of the case.

Id. at 896; accord *In re Ditech Holding Corp.*, Case No. 19-10412 (JLG), 2019 Bankr. LEXIS 1892, at *14 (Bankr. S.D.N.Y. June 24, 2019).

63. Here, the relevant factors clearly favor waiving the investment requirements of section 345(b) with respect to the Diocese’s Investment Accounts:

The Sophistication of the Diocese’s Business.

64. The Diocese’s investment practices with respect to SJIF and the CGA Investment Account are sophisticated and overseen by independent professional outside financial advisors

who ensure that a diversified mix of investments is maintained to achieve moderate targeted growth with minimal exposure to down-side risk in any particular investment. Moreover, the Diocese is itself a large, financially sophisticated organization that employs a professional accounting staff of fifteen (15) individuals devoted to proper oversight and management of the Diocese's finances. Moreover, the Diocese has retained Rick Szekelyi of Phoenix Management Services to serve as its financial advisor in this Chapter 11 Case. Mr. Szekelyi is a certified public accountant and has substantial experience helping companies reorganize through chapter 11 and advising them with respect to the management of their finances. Accordingly, the Diocese is not seeking to make unnecessarily risky or speculative investments, but merely to deploy its resources consistent with the recommendations of its professional advisors in an organized and diversified manner as most institutions of similar size do in the ordinary course.

65. Unless waived for cause as specifically contemplated in the Bankruptcy Code, the investment requirements of section 345(b) apply equally to individual consumer debtors seeking a fresh start under chapters 7 and 13, to family farmers and fishermen seeking to adjust their debts under chapter 12, and to large sophisticated corporations such as the Diocese seeking to reorganize their affairs under chapter 11. Indeed, the universal applicability of section 345(b), and the incongruous result that can obtain when it is applied to larger and more sophisticated debtors as recognized in the Third Circuit's decision in *U.S. Trustee v. Columbia Gas Sys. (In re Columbia Gas Sys.)* 33 F.3d 294 (3d Cir. 1994), is exactly what led Congress in 1994 to amend the Bankruptcy Code to overrule *Columbia Gas* and to allow courts the flexibility to waive the investment requirements in appropriate cases such as this one. See HR Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4. 1994); 140 Cong. Rec. H10767 (Oct. 4. 1994) ("While this requirement is

wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.”).³

The Size of the Diocese’s Business and Amount of Investments Involved.

66. The Diocese has approximately \$30 million in its Investment Accounts. Accordingly, the Diocese is not the unsophisticated debtor with minimal assets Congress sought to protect when it enacted the requirements of section 345(b) and is precisely the type of debtor that the 1994 amendment allowing a waiver of those requirements “for cause” was meant to address. The Diocese has a long track record of responsibly investing its funds (both restricted and unrestricted) to achieve reasonable growth with limited risk. Indeed, the Diocese uses the income generated from its holdings in SJIF to fund portions of its annual budget, and the CGA Investment Account is held and managed for the purpose of creating income to fund the Diocese’s obligations to pay annuitants. If the Diocese were forced to liquidate its current holdings and instead invest in treasury securities or to maintain a collateralized deposit account in strict compliance with section 345(b), it would not be able to obtain a comparable rate of interest or growth, and the reduced income available could force the Diocese to curtail portions of its mission or, with respect to the CGA Investment Account, violate state law which dictates how charitable annuity funds must be invested. Moreover, the reduction in income inherent in disinvesting from SJIF would negatively affect creditors to the extent SJIF funds may be unrestricted and available to pay creditor claims.

67. In addition to the problem of replacing a valuable revenue stream, the Diocese respectfully submits that the sheer size of its investments will make it difficult and unnecessarily

³ The fact that section 345(b) was amended a mere few months after *Columbia Gas* was decided and the legislative history evidences an explicit intent to overrule its holding is further evidence that Congress anticipated that courts would waive the generally applicable investment requirements in cases of large and sophisticated debtors.

expensive, if not outright impossible, to obtain a bond or collateral securities to cover the full amount invested in SJIF and/or to find an authorized depository willing to take on such a deposit.

Bank Ratings.

68. The Diocese submits that each of the custodians for the Diocese's investments in SJIF, and each of the financial institutions with which the other Investment Accounts are held, are large, stable, and financially secure institutions, which, in many cases, are on the U.S. Trustee's list of approved depositories. Accordingly, the Diocese respectfully submits that there is no reason to believe the institutions with whom the Investment Accounts are held present an unreasonable risk of loss.

Complexity of the Case.

69. As described herein, the Diocese's Investment Accounts represent just a part of the Diocese's sophisticated financial management system, and are critical to the Diocese's ability to continue its ordinary course practices in administering its self-insurance programs and the charitable gift annuity program. Forcing the Diocese to liquidate the Investment Accounts and set up alternative arrangements would require a substantial amount of time and effort which would distract from the Diocese's ability to focus on its goal of reorganizing and confirming a plan of reorganization. Moreover, if the Diocese were required to bring the CGA Investment Account and the LOC Collateral Account into strict compliance with section 345(b), the Diocese would be forced to violate its obligations under New York law and to breach its contractual commitments to M&T Bank. Accordingly, the Diocese respectfully submits that this case is sufficiently complex that it should not be required to strictly comply with section 345(b).

Safeguards in Place.

70. The Diocese respectfully submits that appropriate safeguards are in place which render strict adherence with the investment requirements of section 345(b) unnecessary.

71. First, the Diocese is already subject to statutory requirements under New York state laws which mandate the prudent and responsible investment of its funds. The New York Prudent Management of Institutional Funds Act, codified in sections 550-558 of the New York Not-for-Profit Corporation Law (“NPCL”) requires the Diocese to manage and invest its funds with the care an ordinarily prudent person in a like position would exercise under similar circumstances. NPCL § 552(b). Likewise, Insurance Law § 1110(b) mandates that the CGA Investment Fund be invested in accordance with the prudent investor standard defined in section 11-2.3 of the N.Y. Estates, Powers and Trusts Law.

72. Second, the Diocese has engaged the assistance of independent professional outside financial advisors who actively monitor the Diocese’s Investment Account portfolios and ensure that a diversified mix of investments is maintained to achieve moderate targeted growth with minimal exposure to down-side risk in any particular investment.

73. Third, the investment guidelines for SJIF and the CGA Investment Account direct that the Diocese’s investments are comprised primarily of professionally managed mutual funds and other securities which are widely traded and thus exposed to constant market scrutiny and valuation – reducing the risk of unexpected or severe fluctuations in value and avoiding unduly speculative investments in favor of steady growth over a long-term investment horizon.

74. Fourth, the size and diversification built into the Diocese’s portfolios means that any increase or decrease in value of a particular investment is unlikely to have a substantial impact

on the overall value of the Diocese's holdings. Accordingly, the Diocese submits that there are sufficient safeguards in place to justify a waiver of the section 345(b) investment requirements

Impact of Failure of Financial Institutions.

75. Because each of the Diocese's Investment Accounts is comprised of a diversified portfolio of securities, the failure of any individual investment should result in minimal adverse effects on the overall value of its investments.

Benefit to the Diocese.

76. As explained in detail above, the Diocese derives many benefits from the continuation of its current investment program. Most notably, the Diocese's investments provide it with a reliable and steady source of income upon which it relies to fund ordinary course operations as well as its obligations under the charitable annuity program. The Diocese also benefits from economies of scale in joining with other investors in SJIF to take advantage of professional advisory services which would be much more expensive in the absence of a pooled investment vehicle like SJIF. Moreover, keeping the Investment Accounts in place benefits the Diocese benefits by allowing it to remain in compliance with its statutory and contractual obligations.

Harm to the Estate.

77. The Diocese's estate will suffer if it is not allowed to continue its existing investment program. As noted above, the Diocese will lose out on a valuable source of revenue which it simply will not be able to replicate if forced to comply with the requirements of section 345(b). Second, it is highly unlikely that the Diocese could even procure a bond or collateral security to cover the significant amount of investments currently held in the Investment Accounts. Even if such security could be obtained, it would almost certainly be at an extraordinary expense

to the Diocese's estate and would need to be funded out of unrestricted funds, to the detriment of the Diocese's creditors.

78. Accordingly, the only realistic way for the Diocese to strictly comply with section 345(b) would be to liquidate the holdings in each of the Investment Accounts, reducing the current investment positions to cash, and then to place such cash into a deposit account with one of the U.S. Trustee's authorized depositories. The Diocese respectfully submits that doing so would be neither practical nor prudent, and that doing so would put the Diocese at risk of failing to comply with its state law obligations under the New York Prudent Management of Institutional Funds Act and/or section 1110 of the New York Insurance Law to act as a prudent investor of the funds placed under its control, as well as to violate its contractual obligation to M&T Bank to maintain the LOC Collateral Account at Wilmington Trust.

79. In mandating that the Diocese invest its funds in a prudent manner, the New York Prudent Management of Institutional Funds Act explicitly requires the Diocese to consider the following factors:

- (A) **general economic conditions**; (B) **the possible effect of inflation or deflation**; (C) the expected tax consequences, if any, of investment decisions or strategies; (D) the role that each investment or course of action plays within the overall investment portfolio of the fund; (E) **the expected total return from income and the appreciation of investments**; (F) other resources of the institution; (G) **the needs of the institution and the fund to make distributions and to preserve capital**; and (H) an asset's special relationship or special value, if any, to the purposes of the institution.

See NPCL § 552(e)(1) (emphasis added). The Diocese believes that factors (A), (B), (E) and (G) in bold above require the Diocese to invest its funds in a manner targeted to achieve sustainable growth over the long term in order to ensure that the Diocese has sufficient income to fund its ministries and to carry out its mission. Specifically, the law directs the Diocese to invest its funds

in a manner calculated, to the extent possible, to avoid diminution to the overall portfolio, consistent with the needs of the institution to carry out its mission. *See, e.g., Matter of Garrasi*, 943 N.Y.S. 2d 791 (N.Y. Sur. Ct. 2011) (noting that “[p]rudence is measured by the trustee’s overall investment strategy and connotes long-term planning, income production and growth” and finding that holding principal in non-interest bearing account “without question violates the Prudent Investor Act . . .”); *accord, Matter of Rockefeller Univ.*, 2016 N.Y. Misc. LEXIS 3025 (N.Y. Sup. Ct. 2016) (lifting investment restrictions that had become impracticable and wasteful in order to allow non-profit university to seek more profitable investments and thereby increase the amount of income available to be expended).

80. Accordingly, if the Diocese were forced to liquidate its current holdings in SJIF and instead maintain cash in a collateralized deposit account in strict compliance with section 345(b), it would immediately suffer reduced income and would be forced to reduce its spending at the expense of its ability to carry out its ministries and mission. Moreover, the reduction in income inherent in disinvesting from SJIF would negatively affect creditors to the extent SJIF funds may be unrestricted and available to pay creditor claims. *Id.*

81. Likewise, Insurance Law § 1110(b) mandates that the CGA Investment Fund be invested in accordance with the prudent investor standard defined in section 11-2.3 of the N.Y. Estates, Powers and Trusts Law. Importantly, the statute further provides that charitable gift annuity funds like those held in the CGA Account “shall not be applied to pay [the program sponsor’s] debts and obligations or for any purpose except the aforesaid annuity benefits.” *Id.* The Diocese respectfully submits that as charitable gift annuity funds are already governed by a statutorily mandated investment scheme, and may not be used to pay creditors other than annuity holders, the strictures of 11 U.S.C. § 345(b) should not apply.

82. Lastly, the Diocese has a contractual obligation to M&T Bank to maintain the LOC Collateral Account with Wilmington Trust. In the event the Diocese is unable to do so, it could find itself in default with M&T Bank and at risk of having the WCB LOC terminated, which would in turn cause the Diocese to be out of compliance with its obligations to the WCB as a self-insured employer.

A waiver of the requirements of section 345(b) is reasonable and appropriate.

83. On balance, the Diocese respectfully submits that its request for a waiver of compliance with the investment requirements of section 345(b) of the Bankruptcy Code is reasonable and justified by the circumstances of this Chapter 11 Case, and respectfully requests that the Court enter an order granting the relief sought herein, including a waiver of the section 345(b) investment requirements. The Diocese already has in place an investment program that provides appropriate safeguards and controls while allowing the Diocese to responsibly deploy its investment assets to generate much needed revenue in support of its operations and liabilities. This is exactly the case Congress was contemplating in 1994 when it amended the Bankruptcy Code to explicitly overrule *Columbia Gas* and provide courts flexibility to waive the section 345(b) investment requirements “for cause.”

84. Courts in this district and throughout the Second Circuit have found cause to waive the requirements of section 345(b) under appropriate circumstances like the ones of this Chapter 11 Case. *See, e.g., In re The Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y. Jan. 14, 2020) [Docket No. 368]; *In re Maxcom USA Telecom, Inc.*, 19-23489 (RDD) (Bankr. S.D.N.Y. Sept. 27, 2019) [Docket No. 73]; *In re Décor Holdings, Inc., et al.*, Case No. 19-71020 (Bankr. E.D.N.Y. Feb. 27, 2019) [Docket No. 84]; *In re Fullbeauty Brands Holdings Corp.*, 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019) [Docket No. 51]; *In re Primorsk Int’l Shipping Ltd.*, 16-

10073 (MG) (Bankr S.D.N.Y. Feb. 24, 2016) [Docket No. 70]; *In re Eagle Bulk Shipping, Inc.*, 14-12303 (SHL) (Bankr. S.D.N.Y. Sept. 18, 2014) [Docket No. 100]. The Diocese respectfully submits that the present circumstances warrant similar relief in this chapter 11 case.

BANKRUPTCY RULE 6003 IS SATISFIED

85. Bankruptcy Rule 6003 provides that a bankruptcy court may approve a motion to “use, sell, [or] lease” property of the estate, or to “pay all or part of a claim that arose before the filing of the petition,” prior to twenty-one (21) days after the filing of the petition, “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Immediate and irreparable harm exists where, as is the case here, the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t. Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in the context of Bankruptcy Rule 4001). The Diocese submits that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Diocese, as described herein, and that cause exists under Bankruptcy Rule 6003 for the Court to grant immediate relief.

WAIVER OF NOTICE AND STAY REQUIREMENTS

86. To implement the foregoing successfully, the Diocese seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

RESERVATION OF RIGHTS

87. Nothing in this Motion, nor any payment made pursuant to the relief sought herein, if granted, is intended or should be construed as an admission as to the validity, priority or amount of any claim against the Diocese, a waiver of the Diocese's right to dispute any claim or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code and the Diocese expressly reserves its rights with respect thereto.

NOTICE

88. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the Diocese's twenty (20) largest unsecured creditors as set forth in the list filed with the Diocese's petition, (iii) all required governmental agencies and (iv) all financial institutions where the Diocese maintains a Bank Account or Investment Account. In light of the nature of the relief requested herein, the Diocese submits that no further notice is required.

NO PRIOR REQUEST

89. The Diocese has not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Diocese respectfully requests that the Court enter interim and final orders, substantially in the form of the proposed orders attached hereto as *Exhibits A* and *B* respectively, granting the relief requested herein and providing such other and further relief as the Court deems just and proper.

Dated: February 28, 2020

BOND, SCHOENECK & KING, PLLC

By: /s/ Stephen A. Donato

Stephen A. Donato

Charles J. Sullivan

Sara C. Temes

Grayson T. Walter

One Lincoln Center

Syracuse, NY 13202-1355

Telephone: (315) 218-8000

Fax: (315) 218-8100

sdonato@bsk.com

csullivan@bsk.com

stemes@bsk.com

gwalter@bsk.com

*Proposed Attorneys for The Diocese of
Buffalo, N.Y.*

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,

Debtor.

)
)
) Case No. 20-[10322]

)
) Chapter 11
)
)

INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DIOCESE TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS, (II) MAINTAIN INVESTMENT ACCOUNTS AND PRACTICES, AND (III) CONTINUE USING PAYMENT CARDS, AND (B) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

Upon the motion of The Diocese of Buffalo, N.Y. (the “Diocese”) for entry of interim and final orders a) authorizing, but not directing, the Diocese to (i) continue using its existing bank accounts, banking practices and business forms, (ii) maintain its prepetition investment accounts and practices, and (iii) continue to use certain payment cards, and (b) granting limited relief from the requirements of section 345(b) of the Bankruptcy Code [Docket No. ___] (the “Motion”);¹ and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and the Court having reviewed the Motion and the record in this Chapter 11 Case and determined that granting the relief requested in the Motion on an interim basis is in the best interests of the Diocese, its estate, creditors and other parties in interest; and after due deliberation thereon, and good and sufficient cause appearing therefor;

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The Diocese is authorized to: (a) continue to use, with the same account numbers, all of its bank accounts in existence as of the Petition Date as described in the Motion (collectively, the “Bank Accounts”); (b) use, in their present form, all correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Diocese’s status as debtor-in-possession; provided, however, that upon depletion of the Diocese’s correspondence and business forms, the Diocese will obtain new business forms reflecting its status as debtor-in-possession; and (c) treat the Bank Accounts for all purposes as debtor-in-possession accounts, including specifically taking such steps as may be necessary to delineate and separately account for prepetition and postpetition transactions.
3. All banks at which the Bank Accounts are maintained (the “Banks”) are authorized to continue to service and administer the Bank Accounts as accounts of the Diocese as debtor-in-possession, without interruption and in the ordinary course, and to receive, process, honor and pay (i) any and all post-petition checks, drafts, wire transfers and other electronic payment requests issued and drawn on the Bank Accounts (to the extent of funds on deposit), together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.
4. The Diocese is authorized to direct the Banks, and the Banks are authorized to rely on the Diocese’s direction, to pay obligations in accordance with this Interim Order or any separate order of this Court. The Banks shall not be liable to any party on account of following the

Diocese's instructions or representations as to whether any order of this Court has authorized the honoring of any prepetition checks, drafts, wires or transfers.

5. Except as otherwise provided in this Interim Order or any separate order of this Court, all Banks provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn or otherwise issued prior to the Petition Date. As soon as practicable after the entry of this Interim Order, the Diocese shall serve a copy of this Interim Order on those Banks that make disbursements pursuant to the Diocese's banking practices.

6. The Banks are authorized to charge and the Diocese is authorized to pay or honor, both prepetition and post-petition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Diocese.

7. The Diocese is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Diocese may only open a new bank account with a banking institution designated as an authorized depository under the U.S. Trustee Guidelines (an "Authorized Depository"), unless first obtaining the consent of the U.S. Trustee.

8. Notwithstanding section 345 of the Bankruptcy Code and without prejudice to the Diocese's seeking an order from this Court determining that some or all of its investments are not property of the estate, the Diocese is authorized, but not directed, to continue its prepetition investment practices and to maintain each of its Investment Accounts in the ordinary course of its business, and no bond shall be required.

9. Any payment from a Bank Account at the request of the Diocese made by any of the Banks on or prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by any of the Banks on behalf of the Diocese pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from such Bank Account prepetition.

10. All accounts opened by the Diocese following the Petition Date at any bank shall be subject to the rights and obligations of this Interim Order and treated as Bank Accounts hereunder.

11. To the extent the implementation of this Order does not comply with the applicable requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise, such requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise are waived.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

13. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Interim Order shall be effective and enforceable immediately upon its entry. Notwithstanding any objection to the Motion or this Interim Order, this Interim Order shall remain in effect until further order of this Court. Any subsequent modification or vacatur of this Interim Order shall not invalidate or impair any actions taken pursuant to this Interim Order prior to such modification or vacatur.

14. Nothing in the Motion or this Interim Order, nor the Diocese’s payment of any amounts pursuant to this Interim Order, if any, shall be construed as (i) an admission as to the validity of any claim against the Diocese, (ii) a waiver or impairment of the Diocese’s rights to

contest the validity or amount of any claim on any grounds, (iii) a promise to pay any claim, or (iv) an implication or admission by the Diocese that such claim is payable pursuant to this Interim Order.

15. A final hearing on the Motion (the “Final Hearing”) shall be held on [____], 2020 at [__:__] [a.m./p.m.] (prevailing Eastern time). Any objections or responses to the Motion shall be filed and served as required by the Local Rules on or before on [____], 2020 at 4:00 p.m. (prevailing Eastern time). This Interim Order, and all acts taken in furtherance of or reliance upon this Interim Order, shall be effective notwithstanding the filing of an objection. In the event no objections or responses are timely filed and served in accordance with the foregoing, the Court may enter an order granting the relief requested in the Motion on a final basis without holding a Final Hearing.

16. The Diocese is hereby authorized to take all actions it determines are necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

17. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Interim Order.

Dated: _____, 2020
Buffalo, New York

Hon. Carl L. Bucki
United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,

Debtor.

Case No. 20-[10322]

Chapter 11

FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DIOCESE TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS, (II) MAINTAIN INVESTMENT ACCOUNTS AND PRACTICES, AND (III) CONTINUE USING PAYMENT CARDS, AND (B) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

Upon the motion of The Diocese of Buffalo, N.Y. (the “Diocese”) for entry of interim and final orders (a) authorizing, but not directing, the Diocese to (i) continue using its existing bank accounts, banking practices and business forms, (ii) maintain its prepetition investment accounts and practices, and (iii) continue to use certain payment cards, and (b) granting limited relief from the requirements of section 345(b) of the Bankruptcy Code [Docket No. ____] (the “Motion”);¹ and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that no other or further notice is necessary; and an order granting the relief requested in the Motion on an interim basis having been entered on [_____], 2020; and the Court having reviewed the Motion and the record in this Chapter 11 Case and determined that granting the relief requested in the Motion on a final basis is

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

in the best interests of the Diocese, its estate, creditors and other parties in interest; and after due deliberation thereon, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. Any objections to the Motion, or to the relief requested therein, that have not been made, withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and disallowed on the merits.
3. The Diocese is authorized to continue using its banking practices as described in the Motion.
4. The Diocese is authorized to: (a) continue to use, with the same account numbers, all of its bank accounts in existence as of the Petition Date as described in the Motion (collectively, the "Bank Accounts"); (b) use, in their present form, all correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Diocese's status as debtor-in-possession; provided, however, that upon depletion of the Diocese's correspondence and business forms, the Diocese will obtain new business forms reflecting its status as debtor-in-possession; and (c) treat the Bank Accounts for all purposes as debtor-in-possession accounts, including specifically taking such steps as may be necessary to delineate and separately account for prepetition and postpetition transactions.
5. All banks at which the Bank Accounts are maintained (the "Banks") are authorized to continue to service and administer the Bank Accounts as accounts of the Diocese as debtor-in-possession, without interruption and in the ordinary course, and to receive, process, honor and pay (i) any and all post-petition checks, drafts, wire transfers and other electronic payment requests

issued and drawn on the Bank Accounts (to the extent of funds on deposit), together with (ii) any prepetition checks or payment requests, but solely to the extent they relate to payments or obligations approved by separate order of this Court.

6. The Diocese is authorized to direct the Banks, and the Banks are authorized to rely on the Diocese's direction, to pay obligations in accordance with this Final Order or any separate order of this Court. The Banks shall not be liable to any party on account of following the Diocese's instructions or representations as to whether any order of this Court has authorized the honoring of any prepetition checks, drafts, wires or transfers.

7. Except as otherwise provided in this Final Order or any separate order of this Court, all Banks provided with notice of this Final Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn or otherwise issued prior to the Petition Date. As soon as practicable after the entry of this Final Order, the Diocese shall serve a copy of this Final Order on those Banks that make disbursements pursuant to the Diocese's banking practices.

8. The Banks are authorized to charge and the Diocese is authorized to pay or honor, both prepetition and post-petition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Diocese.

9. The Diocese is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Diocese may only open a new bank account with a banking institution designated as an authorized depository under the U.S. Trustee Guidelines (an "Authorized Depository"), unless first obtaining the consent of the U.S. Trustee.

10. Notwithstanding section 345 of the Bankruptcy Code and without prejudice to the Diocese's seeking an order from this Court determining that some or all of its investments are not property of the estate, the Diocese is authorized, but not directed, to continue its prepetition investment practices and to maintain each of its Investment Accounts in the ordinary course of its business, and no bond shall be required.

11. Any payment from a Bank Account at the request of the Diocese made by any of the Banks on or prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by any of the Banks on behalf of the Diocese pursuant to a "midnight deadline" or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from such Bank Account prepetition.

12. All accounts opened by the Diocese following the Petition Date at any bank shall be subject to the rights and obligations of this Final Order and treated as Bank Accounts hereunder.

13. To the extent the implementation of this Final Order does not comply with the applicable requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise, such requirements under section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines, or otherwise are waived.

14. Nothing in this Final Order or any action taken by the Diocese in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Diocese's rights with respect to such matters are expressly reserved.

15. Nothing in the Motion or this Final Order, nor the Diocese's payment of any amounts pursuant to this Final Order, if any, shall be construed as (i) an admission as to the validity of any claim against the Diocese, (ii) a waiver or impairment of the Diocese's rights to contest the

validity or amount of any claim on any grounds, (iii) a promise to pay any claim, or (iv) an implication or admission by the Diocese that such claim is payable pursuant to this Final Order.

16. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Final Order shall be effective and enforceable immediately upon its entry. Any subsequent modification or vacatur of this Final Order shall not invalidate or impair any actions taken pursuant to this Final Order prior to such modification or vacatur.

17. The Diocese is hereby authorized to take all actions it determines are necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

18. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Final Order.

Dated: _____, 2020
Buffalo, New York

Hon. Carl L. Bucki
United States Bankruptcy Judge

Exhibit C

List of Departmental Accounts

Department	Account #	Bank	Type
Catholic Charismatic Renewal	XXXX6673	M&T	checking
Newman Center-SUNY -Bflo.State	XXXXXXXXX773	Northwest	checking
Newman Center-SUNY -Bflo.State	XXXXXXXXXXXX445	Keybank	checking
Newman Center-Fredonia	X1035	Lakeshore Savings	checking
Newman Center-UB Amherst	X2075	M&T	checking
Newman Center at UB	XXXXXXXXXXXX4461	M&T	Savings
Newman Center Stipened - Draft Account	Stipened Draft 0	Sweet Home Federal Credit Union	checking
Newman Center - Share 1 (Newman Center Savings)	Share 1	Sweet Home Federal Credit Union	savings
Newman Center - Share 2 (Building Fund)	Share 2	Sweet Home Federal Credit Union	savings
Newman Center - Share 3 (Split Savings)	Share 3	Sweet Home Federal Credit Union	savings
Newman Center - Share 4 (Men's Club)	Share 4	Sweet Home Federal Credit Union	savings
Newman Center - Share 5 (Chicken BBQ)	Share 5	Sweet Home Federal Credit Union	savings
Newman Center - Share 6 (Annulment Companions)	Share 6	Sweet Home Federal Credit Union	savings
Newman Center - Draft 1 (Split Club Checking)	Draft 1	Sweet Home Federal Credit Union	checking
Newman Center Family Activity - Share 1	Family Share 1	Sweet Home Federal Credit Union	checking
Newman Center - Draft 2	Family Draft 2	Sweet Home Federal Credit Union	checking
Quest Group/North-Catholic Adult Group	X3323	Citizens Bank	checking
Holy Name Society	XXXX XXXX 7374	Bank of America	savings
Crossroads	XXXXX-173-4	Citizens Bank	checking
Retrouvaille Buffalo	XXXXXXXX-835-6	Citizens Bank	checking