

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

Chapter 11

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 CREDIT CARDS, AND (B) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

The Roman Catholic Diocese of Syracuse, New York (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 credit 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 June 19, 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 Northern 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 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 *Declaration of Rev. Msgr. Timothy S. Elmer, J.C.L. Regarding Structure and Pre-Filing History of The Diocese and in Support of the Chapter 11 Petition and First Day Pleadings* and the *Declaration of Stephen Breen 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 credit cards.

9. All of the Bank Accounts are maintained at KeyBank National Association (“KeyBank”). The Diocese further requests that the Court authorize KeyBank to continue to maintain, service and administer the Bank Accounts, including charging any undisputed, outstanding service charges owed to KeyBank on the Petition Date, and that KeyBank 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. The Diocese's primary banking relationship is with KeyBank. In the ordinary course of business, the Diocese utilizes the following accounts to receive, hold and distribute funds (collectively, the “Bank Accounts”), both of which are described in more detail below:

Account name	Depository Institution	Last four digits of account number
Operating Account	KeyBank	3487
Drug Education Account	KeyBank	2830

11. *Operating Account (xx3487)*. The Operating Account is the Diocese’s primary bank account and is used for the vast majority of cash receipts and disbursements, including collection of contributions and assessments and payment of payroll disbursements and most other operating expenses.

12. *Drug Education Account (xx2830)*. The Drug Education Account is a segregated account required by New York State in connection with state-sponsored drug education programs offered at the various schools affiliated with the Diocese. Outgoing payments are made from the Drug Education Account to drug counselors providing the educational programs, and the Diocese, in return, receives offsetting funding from both New York State and schools that benefit from such programs.

II. Investment Accounts

13. In addition to its Bank Accounts, the Diocese maintains the following investment accounts in the ordinary course of its business (collectively, the “Investment Accounts” and together with the Bank Accounts, the “Accounts”), each of which is described in more detail below:

Account name	Depository Institution	Last four digits of account number
CSO Carbini Scholarships	SDIF	1123
CSO Cabrini Team Health	SDIF	0023
CSO Eastern Region School Subsidy	SDIF	2733
CSO Gala Funds	SDIF	2753
CSO Laptop Program	SDIF	0003
CSO Operating Mandated Services	SDIF	0003
CSO Student Accident Insurance	SDIF	1073
CSO Technology	SDIF	2273
CSO Title Funds	SDIF	2273
CSO Western Region School Subsidy	SDIF	2593
CSO Yeazel Education Fund	SDIF	0013
Roman Catholic Diocese of Syracuse #1 MAG	KeyBank	6734

Roman Catholic Diocese of Syracuse #2 MAG	KeyBank	6735
Roman Catholic Diocese of Syracuse (Pool C)	Morgan Stanley	6-093
Roman Catholic Diocese of Syracuse (Pool C)	Morgan Stanley	9-093
FBO Roman Catholic Diocese of Syracuse	NBT Bank	B561

A. Syracuse Diocesan Investment Fund, Inc.

14. The Diocese maintains several accounts with the Syracuse Diocesan Investment Fund, Inc. (“SDIF”), a not-for-profit corporation formed in 2010 to enable the Diocese, along with parishes, cemeteries, and various other separately incorporated Catholic entities, to pool their investments to achieve collective benefits. SDIF is maintained in conformity with Canon Law and the New York State Prudent Management of Institutional Funds Act. SDIF’s affairs are governed by its Certificate of Incorporation and By-laws. As SDIF is a separate and distinct legal entity, the debts and liabilities of SDIF lie solely with SDIF 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 SDIF. As of the Petition Date, SDIF had approximately \$45.6 million in total assets under management, of which approximately \$2,257,000 represent Diocesan funds. All of the Diocese’s investments in SDIF are comprised of special purpose funds which are dedicated to supporting Catholic schools within the territory of the Diocese.

15. SDIF’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. SDIF provides for administration and protection of temporal goods, as required by Canon Law. SDIF 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.

16. SDIF manages both a short-term fund which seeks to provide current income while maintaining liquidity by investing primarily in investment grade short-term equity securities, as well as a long-term fund which seeks to provide a blend of capital growth and current income by investing in fixed income securities.

17. SDIF retains multiple investment managers, namely, the Knights of Columbus, Vanguard, and Discipline Capital Management (the “Investment Managers”), to provide investment advice regarding appropriate investments and to manage various portfolios of securities. The 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. Custody services for SDIF are provided by M&T Bank. Accounting and allocation services are provided by Dermody, Burke and Brown.

18. The Diocese’s investments in SDIF are held in eleven separate accounts, each of which is described below:

- a. *Catholic School Office - Cabrini Scholarships (xx1223)*. Funds in this investment account originate from a restricted grant for from the Mother Cabrini Health Foundation and are used to fund tuition scholarships for students at Catholic schools within the Diocese;
- b. *Catholic School Office - Cabrini Team Health (xx0023)*. Funds in this investment account originate from a restricted grant by the Mother Cabrini Health Foundation to provide healthcare resources to students of various Catholic schools within the Diocese and their family members;

- c. *Catholic School Office - Eastern Region (xx2733)*. Funds in this investment account originate from contributions by parishes within the Diocese's Eastern Region which have been designated to support Catholic schools within the Diocese;
- d. *Catholic School Office - Western Region (xx2593)*. Funds in this investment account originate from contributions by parishes within the Diocese's Western Region which have been designated to support Catholic schools within the Diocese;
- e. *Catholic School Office - Gala Fund (xx2753)*. Funds in this investment account originate from the net proceeds of the annual gala held to support Catholic schools within the Diocese and are used to fund scholarship awards;
- f. *Catholic School Office - Laptop Program (xx0003)*. Funds in this investment account originate from contributions from Catholic schools within the Diocese which have been designated for the purpose of furnishing students with laptops;
- g. *Catholic School Office - Operating Mandated Services (xx0003)*. Funds in this investment account originate from New York State for mandated school services such as state testing, attendance and regents exams;
- h. *Catholic School Office - Student Accident Insurance (xx1073)*. Funds in this investment account originate from Catholic schools within the Diocese to pay premiums for boiler insurance and accident insurance;
- i. *Catholic School Office - Technology (xx2273)*. Funds in this investment account originate from federal technology rebates awarded to Catholic schools within the Diocese and are used for technology expenses in Catholic schools;
- j. *Catholic School Office - Title Funds (xx2773)*. Funds in this investment account originate from federal educational funds made available under Titles I-VII of the

Elementary and Secondary Education Act which have been distributed by New York State to support the Diocese's educational initiatives, including support to Catholic schools within the Diocese.

- k. *Catholic School Office - Yeazel Education Fund (xx0013)*. Funds in this investment account originate from scholarship grants received from the Msgr. Yeazel Scholarship Fund.

B. Collateral Investment Accounts

19. The Diocese maintains accounts at KeyBank and at NBT Bank for the purpose of collateralizing certain financial accommodations extended to the Diocese by these banks.

20. With respect to KeyBank, the Diocese is indebted to KeyBank pursuant to a promissory note and loan agreement which made available to the Diocese a \$7,300,000 revolving loan consisting of a \$2,000,000 working capital line of credit (the "Line of Credit") and a \$5,300,000 letter of credit (the "WCB LOC"). As described more fully in the Diocese's motion to maintain its insurance programs filed contemporaneously herewith, the Diocese is self-insured for workers compensation claims, and, like most self-insured organizations, the New York State Worker's Compensation Board (the "WCB") has required that the Diocese post security to cover potential workers compensation liabilities. The WCB LOC is issued by KeyBank to the WCB to secure the Diocese's obligations under its self-insured worker's compensation program.

21. The Diocese's repayment obligations under the Line of Credit and WCB LOC are collateralized by the following blocked investment accounts held at KeyBank, which, as of the Petition Date, have an aggregate value of approximately \$7.6 million:

- a. *Roman Catholic Diocese of Syracuse (#1 MAG) (xx6734)*. An investment account managed by KeyBank which invests in investment grade short-term equity securities;
 - b. *Roman Catholic Diocese of Syracuse (#2 MAG) (xx6735)*. An investment account managed by KeyBank which invests in long-term fixed income securities.
22. The Debtor also collateralizes approximately \$6.5 million in term loans extended by NBT Bank (the “NBT Term Loans”) with the following blocked investment account at NBT Bank, which as of the Petition Date have a value of approximately \$9.8 million:

- a. *FBO Roman Catholic Diocese of Syracuse (xxB561)*. An investment account managed by NBT Bank which invests in a mix of short-term equity securities and long-term fixed income securities.

C. Insurance Investment Fund

23. The Diocese also maintains reserves related to its insurance programs in the following investment accounts held and managed by Morgan Stanley which, as of the Petition Date, have an aggregate value of approximately \$7.5 million:

- a. *Roman Catholic Diocese of Syracuse (Pool C) (xx6-093)*. An investment account which invests in long-term fixed income securities;
- b. *Roman Catholic Diocese of Syracuse (Pool C) (xx9-093)*. An investment account which invests primarily in investment grade short term equity securities.

III. Credit Cards

24. The Diocese utilizes visa credit cards (the “Credit Cards”) issued by KeyBank to manage business expenses for the Diocese and its employees. The aggregate credit limit for the Diocese’s Credit Card program is \$100,000, however each card issued to Diocesan personnel has

a lower individual limit, with most cards limited to \$5,000 or less. On average, the Diocese incurs approximately \$10,000 per month in charges on the Credit Cards, and the balances on the Credit Cards have traditionally been paid in full at the end of each billing cycle in the ordinary course of business. As of the Petition Date the Diocese anticipates that the balance on the Credit Cards will be approximately \$15,095.

25. The Diocese has requested KeyBank's consent to maintain the Credit Card program in place. To the extent KeyBank agrees to maintain the Credit Card program, the Diocese seeks authority to continue to use and pay the Credit Cards in the ordinary course of business, including any prepetition amounts that may be owed with respect to such Credit Cards.

IV. Business Forms

26. In the ordinary course of business, the Diocese uses checks associated with the Bank Accounts as a method of paying many of its accounts payable. Additionally, the Diocese uses a variety of correspondence and business forms including, but not limited to, letterhead, purchase orders and invoices.

27. 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 newly issued payment checks 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.

28. The Diocese has a long-standing relationship with KeyBank and a long-established practice with respect to its use of its Bank Accounts. 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.

29. Closing the Diocese's Bank Accounts would cause disruption to the Diocese's operations and fulfillment of its mission. 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. Specifically, key operating expenses such as payroll and associated payroll taxes, payments for health insurance claims under the Diocese's health plan, and workers compensation payments are all automatically withdrawn from the Diocese's operating account. As a result, the Diocese respectfully submits it is appropriate to maintain its prepetition Bank Accounts and practices.

30. 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.

31. 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 U.S. 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.

32. 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

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

inadvertent payment of prepetition claims, by voiding checks drawn before the Petition Date. As discussed below, the Diocese will ensure a separation between pre and post-petition financial activity through clear record keeping.

33. 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.

34. 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.

35. 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 expeditiously 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.

36. KeyBank is listed on the U.S. Trustee's authorized depositories list.² To the extent the balance of the Diocese's accounts may 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.

37. 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 Good Samaritan Lutheran Health Care Center*, Case No. 19-12215 (Bankr. N.D.N.Y. Feb. 3, 2020) [Docket No. 119]; *In re Rochester Drug Co-Operative, Inc.*, Case No. 20-20230 (Bankr. W.D.N.Y. May 19, 2020) [Docket No. 316]; *In re The Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y., Sep. 13, 2019) [Docket No. 29]; *In re Centerstone Linen Services, LLC*, Case No. 18-31754 (Bankr. N.D.N.Y., Dec. 20, 2018) [Docket No. 26]; *In re Datacom Systems, Inc.*, (Bankr. N.D.N.Y. June 7, 2018) [Docket No. 38]; *In re Carthage Specialty Paperboard, Inc.*, Case No. 18-30226 (Bankr. N.D.N.Y. Mar. 2, 2018) [Docket No. 34]; *In re Auburn Armature, Inc.*, Case No. 17-30743 (Bankr. N.D.N.Y. May 24, 2017) [Docket No. 29].

38. 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)

² *See* <https://www.justice.gov/ust-regions-r02/region-2-chapter-11-2>; download available at https://www.justice.gov/ust-regions-r02/file/ndny_dep.pdf/download.

[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].

39. 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.

40. 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. As soon as practicable after the Petition Date, the Diocese will include "debtor-in-possession" or "DIP" on the checks it prints electronically.

41. 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, changing business forms is unnecessary and unduly burdensome, as it would appear that the parties doing business with the Diocese will be aware of the Diocese's status as debtor-in-possession as a result of the anticipated media coverage of this Chapter 11 Case and because the Diocese intends to distribute

communications and notices of commencement of this Chapter 11 Case to such parties. 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.

42. 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 and other financial institutions 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 Accounts.

43. In accordance with its contractual arrangements with the various financial institutions where it maintains its Accounts, the Diocese incurs periodic service charges, management or administrative charges, and other fees, costs, charges and expenses in connection with the maintenance of the 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 Accounts. Further, in many instances, the financial institutions have setoff rights for the Service Charges and therefore 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, 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.

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

45. 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.

46. 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.

47. 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).

48. 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.

49. 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).

50. 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).

51. 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.

52. The Diocese's investment practices are 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 devoted to proper oversight and management of the Diocese's 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.

53. 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 occur 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.

54. The Diocese has approximately \$27 million in its various 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). Rather, the Diocese 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. 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.

55. In addition, the Diocese respectfully submits that the sheer size of its investments will make it difficult and unnecessarily expensive, if not outright impossible, to obtain a bond or collateral securities to cover the full amount invested in in the Investment Accounts and/or to find an authorized depository willing to take on such a deposit.

Bank Ratings.

56. The Diocese submits that each of the financial institutions with which the 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

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.

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.

57. 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 insurance programs. 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, because several of the Investment Accounts serve as collateral for the Diocese's obligations to KeyBank and NBT Bank, liquidating those accounts to ensure strict compliance with section 345(b) would require the Diocese to breach its contractual commitments to those banks, potentially also causing the Diocese to fall out of compliance with the WCB under New York law. Accordingly, the Diocese respectfully submits that this case is sufficiently complex and therefore it should not be required to strictly comply with section 345(b).

Safeguards in Place.

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

59. 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).

60. 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.

61. Third, 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.

62. 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.

63. 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.

64. 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 reliable and steady growth for funds entrusted to its care. Moreover, keeping the Investment

Accounts in place benefits the Diocese by allowing it to remain in compliance with its statutory and contractual obligations.

Harm to the Estate.

65. 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 growth 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.

66. 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 to act as a prudent investor of the funds placed under its control, as well as to violate its contractual obligations to KeyBank and NBT Bank with respect to their respective interests held as collateral in the Investment Accounts.

67. 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 assets 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 assets 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).

68. Accordingly, if the Diocese were forced to liquidate its current holdings in the Investment Accounts and instead maintain cash in a collateralized deposit account in strict compliance with section 345(b), it would immediately suffer reduced growth 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 growth inherent in disinvesting from the Investment Accounts would negatively

affect creditors to the extent Investment Account funds may be unrestricted and available to pay creditor claims. *Id.*

69. Lastly, the Diocese has contractual obligations to KeyBank and NBT Bank to maintain the Investment Accounts which collateralize their respective interests. In the event the Diocese is unable to do so, it could find itself in default and at risk of having the Line of Credit, WCB LOC or NBT Term Loan terminated. Termination of the WCB LOC would cause the Diocese to fall out of compliance with its obligations under New York law as a self-insured employer and termination of either the Line of Credit or the NBT Term Loan would negatively impact the Diocese's liquidity.

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

70. 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 critical growth 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."

71. 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 (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 Eagle Bulk Shipping, Inc.*, Case No. 14-12303 (Bankr. S.D.N.Y. Sept. 18, 2014) [Docket No. 100]; *In re Northeast Biofuels, LP*, Case No. 09-30057 (Bankr. N.D.N.Y. Jan 15, 2009) [Docket No. 12]; *In re Auburn Memorial Hospital*, Case No. 07-31126 (Bankr. N.D.N.Y. June 12, 2007) [Docket No. 158]. The Diocese respectfully submits that the present circumstances warrant similar relief in this chapter 11 case.

III. The Court Should Approve the Diocese's Continued Use of the Credit Cards in the Ordinary Course of Business

72. Under section 363(c)(1) of the Bankruptcy Code, a debtor in possession may use property of the estate in the ordinary course of business without a hearing. Furthermore, section 364(a) of the Bankruptcy Code permits a debtor in possession to “obtain unsecured credit and incur unsecured debt in the ordinary course of business” without a court order.

73. Purchases made using the Credit Cards fall within the ordinary course of business under section 363(c)(1). Use of credit cards and similar payment methods is a widespread means of facilitating day-to-day business transactions. As a result, the Diocese believes that it does not require the Court's approval to continue using the Credit Cards on a postpetition basis. Further, although the Diocese owes approximately \$15,095 with respect to prepetition amounts charged on its Credit Cards, pursuant to sections 363(b)(1) and 105(a) of the Bankruptcy Code, the Diocese requests authority to pay any such prepetition obligations related to the Credit Cards.

74. Continued use of the Credit Cards is integral to the stability of the Diocese's operations. Absent an order clearly authorizing the Diocese to continue to use and pay the Credit Cards, KeyBank, may cancel or restrict the use of the Credit Cards or the extension of further trade credit. Moreover, KeyBank may seek to set-off any amounts owing against cash in the Diocese's

Bank Accounts held at KeyBank. If that were to occur, it would be costly, disruptive to the Diocese's operations, burdensome to it's the Diocese's estate, and time-consuming for the Diocese to establish new payment card and/or trade credit programs with alternate providers. To avoid any disruption in its operations, the Diocese could be forced to ask employees to front the cost of purchases and expenses on their own (and seek reimbursement later), which could be a personal hardship and would more than likely damage the Diocese's relationships with such employees. Furthermore, it would be burdensome for the Diocese to seek to establish new credit programs. Accordingly, the Diocese seeks authorization for the continued use of its Credit Cards and authorization to pay any outstanding amounts owing with respect to such Credit Cards.

BANKRUPTCY RULE 6003 IS SATISFIED

75. 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

76. 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

77. 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

78. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Northern 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

79. 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: June 19, 2020

BOND, SCHOENECK & KING, PLLC

By: /s/ Stephen A. Donato
Stephen A. Donato (Bar Roll No. 101522)
Charles J. Sullivan (Bar Roll No. 507717)
Sara C. Temes (Bar Roll No. 514148)
Grayson T. Walter (Bar Roll No. 518237)
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 Roman Catholic
Diocese of Syracuse, New York*

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

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 CREDIT CARDS, AND (B) GRANTING LIMITED
RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)**

Upon the motion of The Roman Catholic Diocese of Syracuse, New York (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 credit 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;

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 as soon as practicable, the Diocese shall print “DIP” or “debtor in possession” on any electronically printed payment checks; 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 post-petition transactions.

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

3. KeyBank is 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 KeyBank, and KeyBank is authorized to rely on the Diocese's direction, to pay obligations in accordance with this Interim Order or any separate order of this Court. KeyBank 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, KeyBank 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. Each financial institution at which the Diocese maintains one or more Accounts is authorized to charge, and the Diocese is authorized to pay or honor, both prepetition and post-petition service charges, management or administrative charges, and other fees, costs, charges and expenses to which such financial institutions 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 the 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 KeyBank on or prior to the Petition Date (including any ACH Transfer KeyBank is or becomes obligated to settle), or any instruments issued by KeyBank 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. The Diocese is authorized, but not directed, to continue to use and pay any charges associated with the Credit Cards in the ordinary course of business and consistent with its prepetition practices, including by paying any prepetition obligations outstanding with respect thereto. Nothing in this Order modifies or amends any agreements related to the Credit Cards entered into between the Diocese and the issuers of the Credit Cards, and the issuers of the Credit Cards shall retain the right to terminate or renew the Credit Cards in accordance with the terms of any such agreements.

12. 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.

13. The requirements set forth in Local Bankruptcy Rule 9013-5(a) are satisfied by the contents of the Motion or are otherwise deemed waived.

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

15. 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.

16. 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.

17. 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.

18. 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.

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

###

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

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 CREDIT CARDS, AND (B) GRANTING LIMITED
RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)**

Upon the motion of The Roman Catholic Diocese of Syracuse, New York (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 credit 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 [Docket No. ____]; 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 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

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

reference to the Diocese's status as debtor-in-possession; provided, however, that as soon as practicable, the Diocese shall print "DIP" or "debtor in possession" on any electronically printed payment checks; 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. KeyBank is 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 KeyBank, and KeyBank is authorized to rely on the Diocese's direction, to pay obligations in accordance with this Final Order or any separate order of this Court. KeyBank 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, KeyBank shall not honor or pay any bank payments arising out of the Bank Accounts 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 KeyBank.

8. Each financial institution at which the Diocese maintains one or more Accounts is authorized to charge, and the Diocese is authorized to pay or honor, both prepetition and post-petition service charges, management or administrative charges, and other fees, costs, charges and

expenses to which such financial institutions 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 KeyBank on or prior to the Petition Date (including any ACH Transfer KeyBank is or becomes obligated to settle), or any instruments issued by KeyBank 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. The Diocese is authorized, but not directed, to continue to use and pay any charges associated with the Credit Cards in the ordinary course of business and consistent with its prepetition practices, including by paying any prepetition obligations outstanding with respect thereto. Nothing in this Order modifies or amends any agreements related to the Credit Cards

entered into between the Diocese and the issuers of the Credit Cards, and the issuers of the Credit Cards shall retain the right to terminate or renew the Credit Cards in accordance with the terms of any such agreements.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

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