

FILED
JAN 16 2013

U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF N.C.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA

**ADMINISTRATIVE ORDER REGARDING TRUSTEE COMPLIANCE WITH
11 U.S.C. SECTION 345(a)**

This matter came before the Court upon the recommendation of the Bankruptcy Administrator that the court modify the requirements that bankruptcy trustees comply with provisions relating to deposit of estate funds into interest bearing accounts. The court finds as follows:

1. 11 U.S.C. §345(a) provides that “ a trustee in a case under this title *may* make such deposit or investment of the money of an estate for which such trustee serves as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” (emphasis added). The court finds that although trustees have traditionally deposited estate funds into interest bearing commercial bank accounts in order to earn a return for estate funds while the case is being administered, interest rates are currently at historical lows and offer little or nothing in the way of return “taking into account the safety of such deposit....”¹

2. For calendar year 2012 in consideration of provisions in the Dodd-Frank Act’s allowance of unlimited FDIC coverage for non-interest bearing accounts, the Administrative Office of the United States Courts had granted a waiver to bankruptcy trustees in districts under the Bankruptcy Administrator program from the requirement in 11 U.S.C. §345 that estate funds be deposited into an interest bearing accounts at all times. The waiver expired on December 31, 2012 coinciding with the expiration of the unlimited FDIC coverage provisions of the Dodd-Frank legislation.

3. For Chapter 13 cases, the standing trustees in the Eastern District of North Carolina are given “earnings credits” in lieu of modest interest payments. These

¹ According to the website Bankrate.com, the average national yield for a money market account is 0.12% APY. If a trustee deposited \$10,000 for two years at this rate, he would earn \$2.40 in interest. Source: <http://www.bankrate.com> (visited 1/10/2013).

credits are used to offset some of the service charges incurred in the maintenance of these accounts, with the remainder of the banking service charges paid as an expense of the Chapter 13 Trusteeship.

4. Typically, Chapter 7 trustees maintain estate accounts with the depository that is a banking partner with the trustee's case management software system provider. The partner banks are no longer offering interest-bearing accounts to Chapter 7 Trustees.

5. Although there is no provision in §345(a) that expressly grants the court with authority to waive its requirements in general, the statutory language states that the trustee "may" make such deposit as "will yield the maximum reasonable net return". The use of the word "may" appears to permit the exercise of some discretion by the trustee in determining what deposit or investment will best suit the circumstances.

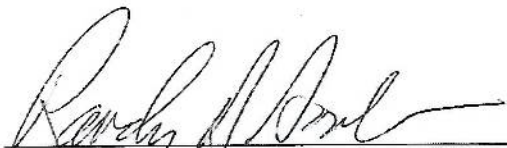
6. In all chapters, bankruptcy trustees must use their best judgment in determining whether deposits or investments "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. §345(a). Considering that little or no interest is being paid on demand accounts of the type maintained by trustees in the current economic climate and the difficult, if not impossible task of obtaining both appropriate banking services and interest on deposits, the Court specifically finds that it is reasonable for a bankruptcy trustee in any chapter to deposit or invest estate funds in accounts where no interest is paid or where no return on investment is available.

Wherefore, it is ordered:

1. Beginning January 1, 2013, bankruptcy trustees may continue to maintain estate funds in non-interest bearing accounts.
2. Beginning January 1, 2013, bankruptcy trustees may open and deposit estate funds into new non-interest bearing accounts and make deposits into non-interest bearing accounts.
3. Nothing in this order shall be construed to prohibit trustees from depositing estate funds into bank accounts or otherwise making investments of estate funds such that a reasonable return on deposit or investment is achieved.
4. This Order applies to all bankruptcy trustees serving in cases in the Eastern District of North Carolina in all chapters under Title 11, United States Code.
5. All other requirements of 11 U.S.C. §345 are unaffected by this Order.

SO ORDERED, by Randy D. Doub, Chief Judge of the United States Bankruptcy Court with the concurrence of Judges J. Rich Leonard and Stephani Humrickhouse.

DATED: January 15, 2013


RANDY D. DOUB, Chief Judge
U.S.B.C. - E.D.N.C.