

**UNITED STATES BANKRUPTCY ADMINISTRATOR
MIDDLE DISTRICT OF NORTH CAROLINA**

JOHN PAUL H. COURNOYER — BANKRUPTCY ADMINISTRATOR

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Via E-Mail to All Chapter 7 Panel Trustees

**Re: Interim Distributions and Interest-Bearing Investments in Cases
with Funds in Excess of FDIC Limits that Are Expected to Remain
Open for An Extended Period**

Dear Trustees,

Panel trustees have a duty to deposit or invest estate funds “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). Some of you have asked me for guidance on compliance with section 345(a) due to the rising interest rates available in the marketplace. As of May 15, 2023, the yield on 6-month treasury bills was 5.24%, yet a review of trustees’ interim reports reveals that none of the software providers and bank affiliates in our district typically pay interest on deposits, and two of the three charge monthly bank/service fees based upon a percentage of deposits. This letter discusses my office’s position regarding three possible methods for complying with section 345(a)¹ in cases where you are holding substantial funds and the case is not expected to be closed in the near future. This language is intentionally vague. As the time horizon for resolution a case gets longer, the dollar threshold for considering action to increase yield should get lower. That said, the FDIC limit of \$250,000 would be a reasonable cutoff in my view for trustees to begin considering these issues.

In these cases, you should consider: (i) requesting authority to make interim distributions, (ii) requesting a fee reduction and interest from your service provider or banking affiliate, or (iii) seeking authority to move funds to another safe investment, such as CD’s or Treasury bills.

Seek Authority to Make Interim Distributions

¹ Additionally, section 345(b) requires that all deposits or investments in excess of applicable FDIC/SIPC limits be fully bonded or collateralized. Although it is the trustees’ fiduciary responsibility to comply with section 345, our office actively monitors accounts where estate funds are held to ensure compliance. Events in the banking sector have caused certain sureties to issue bond cancellations. Unless remedied by replacement bonding or collateralization, the surety bond for Pinnacle Bank will be cancelled effective June 15, 2023, and the surety bond for AXOS Bank will be cancelled effective July 4, 2023. We have been provided assurances that these banks intend to provide substitute bonding or collateralization. These guidelines may also be helpful in the event that you need to move funds in order to comply with section 345(b).

You should consider seeking authority to make interim distributions in cases where the claims bar date has expired, the claims reconciliation process has been completed, and you are reasonably certain that you can make distributions without risking subsequent administrative insolvency. This will reduce administrative expenses by lowering bank fees and enhance the recovery of creditors due to the time value of money. It will also address the concerns about the yield differential by reducing the balance of funds on hand. The BA's Office will generally support distribution of interim payment towards attorney's fees, if substantial disbursements to creditors are also made, and the other circumstances described above are present. We would not support interim payment of trustee commission.

Negotiate with Your Software Provider

Fiduciary software providers and their banking affiliates may agree to fee waivers or reductions, and the payment of some interest, on a case-by-case basis. Software providers enable you to do your jobs efficiently and avoid errors, and they deserve fair compensation for their services. For this reason, it would be appropriate for the yield provided in these cases to be some amount less than the maximum safe yield available in the marketplace. For example, in the current rate environment, if a software provider agreed to waive or dramatically reduce service fees and pay 2.5% interest on deposits, I believe it would comply with § 345(a) for you to leave the funds on deposit with the provider.

Transfer Funds to Safe, Interest-Bearing Alternatives

If the above options are not available, you may consider transferring funds to a safe, interest-bearing alternative, such as CDs or Treasury bills with time horizons that are appropriate given the anticipated case timeline. Under the Bankruptcy Code, a Court order would not be necessary to move funds for this purpose if the transfer complies with section 345. However, your contract with your software provider likely has a provision requiring you to maintain all estate deposits with their banking affiliate. Therefore, you may wish to obtain the consent of your software provider before making such a transfer. The BA's Office can provide a letter to your service provider indicating our position that the transfer is necessary to comply with § 345(a). If consent from the service provider is not obtained, please contact my office. In appropriate circumstances, we will prepare a joint motion seeking an Order from the Court directing you to transfer funds to comply with § 345(a).

Please feel free to call me with any questions and thank you for your hard work!



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