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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
: :
Doral Financial Corporation,¹ : Case No. 15- _____ ()
: :
Debtor. :
-----X

**MOTION OF THE DEBTOR FOR A WAIVER
UNDER SECTION 345(b) REGARDING THE DEBTOR'S BANK ACCOUNTS**

The debtor in the above-captioned case (the "Debtor") submits this motion (the "Motion") for entry of an order granting the Debtor a waiver under Bankruptcy Code section 345(b) with respect to the Debtor's existing bank accounts with Citibank, N.A., on the terms and conditions set forth herein. In support of this Motion, the Debtor respectfully states as follows:

¹ The last four digits of the taxpayer identification number of the Debtor are 2162.

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105 and 345 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

Background

2. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. Sections 1107(a) and 1108 of the Bankruptcy Code authorize the Debtor to continue to operate its businesses and manage its properties as a debtor in possession. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no committee has been appointed or designated.

3. A summary of the Debtor’s business, the Debtor’s capital structure, and the events leading to this chapter 11 case, as well as the facts and circumstances supporting this Motion, are set forth in the *Declaration of Carol Flaton in Support of First Day Motions* (the “Flaton Declaration”)², filed contemporaneously herewith.

The Bank & Securities Accounts

4. As discussed in the Flaton Declaration, the Debtor is a former bank holding company that owned Doral Bank. On February 27, 2015, OCIF appointed the FDIC as receiver for Doral Bank. Prior to the receivership, the Debtor performed most of its banking functions using deposit accounts at Doral Bank. According to the Debtor’s records, the Debtor has approximately \$84,000 in its deposit account with Doral Bank.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Flaton Declaration.

5. The Debtor also has two accounts with Citibank (the “Bank Accounts”). The Bank Accounts held approximately \$20.5 million as of the Petition Date. The Debtor has no other regular bank accounts.³ The Bank Accounts now function as the Debtor’s sole operating deposit accounts.

6. The Debtor also has approximately \$350,000 in deposit accounts with Banco Popular. Banco Popular acquired some of the assets of Doral Bank after it was placed into receivership.

7. Prepetition, the Debtor sought to open a “debtor in possession” deposit account with Citibank and several other depositories, all of whom are listed on the approved debtor in possession depository list maintained by the Office of the United States Trustee (the “U.S. Trustee”). Citibank and the other depositories uniformly declined to grant the Debtor such a deposit account, on any terms. The U.S. Trustee’s approved depository list notes that Citibank is not taking new debtor in possession accounts at this time.

Relief Requested

8. By this Motion, the Debtor seeks a waiver under Bankruptcy Code section 345(b) with respect to the Bank Accounts. The Debtor intends to promptly close the accounts with Banco Popular and Doral Bank and transfer the funds therein to the Bank Accounts.

³ The Debtor has a deposit account with The Bank of New York (“BONY”) that relates to a Collateral Account Control Agreement, dated January 20, 2006, between BONY, the Debtor, and Fannie Mae. By agreement with Fannie Mae, the Debtor has pledged securities collateral to Fannie Mae to secure certain repurchase obligations the Debtor owes to Fannie Mae related to prepetition loan sales. The Debtor’s deposit account with BONY is a part of this arrangement. The Debtor expects Fannie Mae would assert it holds a lien on any amounts in the BONY deposit account. The Debtor reserves its rights with respect to its arrangements with Fannie Mae and BONY.

Basis for Relief

A. A Limited Waiver of Bankruptcy Code Section 345(b), On the Terms Proposed by the Debtor, Is Appropriate Under the Circumstances

9. Absent a waiver, Bankruptcy Code section 345(b) requires that any deposit or other investment made by a debtor, except those (a) insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or (b) backed by the full faith and credit of the United States, be secured by either (i) a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee for the relevant district or (ii) the deposit of securities of the kind specified in 31 U.S.C. § 9303. See 11 U.S.C. § 345(b).

10. In 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders “for cause.” 140 Cong. Rec. H10, 767 (Oct. 4, 1994). In considering requests for waivers under Bankruptcy Code section 345(b), courts consider a variety of factors, including (i) the ratings of the institutions where funds are held, (ii) the complexity of the case, (iii) the benefit to the debtor, (iv) the harm, if any, to the estate, and (v) the reasonableness of the request in light of the overall circumstances of the case. See In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

11. The Debtor submits that a waiver is appropriate in this chapter 11 case, on the terms proposed herein. As discussed above, the Debtor attempted to open a “debtor in possession” deposit account prepetition with multiple U.S. Trustee approved depositories, including Citibank, but was unsuccessful. The Debtor’s existing Bank Accounts are with Citibank, who is – as reflected in the U.S. Trustee’s own depository list – refusing to grant new debtor-in-possession bonded accounts on the terms approved by the U.S. Trustee.

12. The Debtor initially requests only a temporary waiver of Bankruptcy Code section 345(b) for 90 days, to provide the Debtor time to pursue a deposit account with a U.S. Trustee approved depository in the postpetition period. If the Debtor can procure a bonded “debtor in possession” deposit account with an approved depository, the Debtor will use such account as its primary operating account and close the Bank Accounts. If the Debtor is unable to procure such an account, however, the Debtor reserves the right to seek an ongoing waiver of Bankruptcy Code section 345(b) for the Bank Accounts.

13. In support of the waiver, the Debtor notes that the Bank Accounts are with Citibank, one of the largest financial institutions in the world. Citibank has a strong credit rating.⁴ And Citibank, while apparently not accepting new “debtor in possession” accounts, is listed on the U.S. Trustee’s approved depository list. The Debtor submits that, given the circumstances, the risk to creditors from the Debtor’s deposits with Citibank are essentially nil.

14. The Debtor also seeks a waiver of the requirement that they close the Bank Accounts and open a new postpetition bank account. The U.S. Trustee operating guidelines for debtors in possession require a chapter 11 debtor to immediately: (i) close all existing bank accounts and open new debtor in possession bank accounts; (ii) establish one debtor in possession account for all estate monies required for the payment of taxes, including payroll taxes, and (iii) maintain a separate debtor in possession account for cash collateral.

15. The Debtor requests the authority to continue to use the Bank Accounts with the same account numbers as the Debtor used prepetition. The Debtor represents that if the relief

⁴ The long-term and short-term credit ratings of Citibank are set forth in the following chart:

	<u>Moody’s</u>	<u>S&P</u>	<u>Fitch</u>
<i>Long-term</i>	A2	A	A+
<i>Short-term</i>	P1	A1	F1

requested in this Motion is granted, it will not pay, and will direct its bank to not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

16. Finally, in connection with continuing the use of the Bank Accounts, the Debtor requests the authority to pay prepetition bank fees and charges to the extent of the amount of the Debtor's cash held in the accounts. Citibank may have setoff rights with respect to any of the Debtor's cash it holds and could request that this Court lift the automatic stay to exercise those setoff rights. The Debtor seeks authority to pay the prepetition bank fees and charges to the extent the Debtor determines, in its good faith business judgment, that Citibank has valid setoff claims pursuant to section 553 of the Bankruptcy Code (but only to the extent of such claims). This will save the Debtor the time and expense of responding to a lift stay request and/or negotiating a stipulated order to allow Citibank to exercise setoff rights. The Debtor further submits that such relief requested would not prejudice the interests of any other creditors or other parties-in-interest.

17. Courts in this District have frequently granted waivers under Bankruptcy Code section 345(b) to allow debtors to continue using prepetition bank accounts. See, e.g., In re NII Holdings, Inc., et al., Case No. 14-12611 (Bankr. S.D.N.Y. Nov. 12, 2014) [Docket No. 209] (authorizing the Debtors to continue investing cash in accordance with their existing investment practices, and authorizing and directing the debtors' banks to honor the debtors' requests to invest the debtors' funds in accordance with existing investment practices); In re Acrex, Inc., Case No. 13-13133 (Bankr. S.D.N.Y. November 12, 2013) [Docket No. 23] (waiving the deposit and investment requirements of section 345(b) and the related bond requirements); In re Lightsquared Inc., et al., Case No. 12-12080 (Bankr. S.D.N.Y. June 11, 2012) [Docket No. 115] (waiving the application of the deposit and investment guidelines of section 345(b) to permit the

debtors to maintain deposits and investments in the same or similar manner as they did so prior to the petition date); In re Tronox, Inc., Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009) [Docket No. 146] (permitting the debtors to continue investing excess cash in short term Eurodollar time deposits); In re DJK Residential LLC, Case No. 08-10375 (Bankr. S.D.N.Y. Feb. 5, 2008) [Docket No. 54] (authorizing and directing the debtors' banks and all applicable financial institutions to accept and hold or invest funds in accordance with the debtors' prepetition investment practices, without the need for any additional agreements not otherwise utilized prior to the petition date).

B. The Debtor Should Be Authorized to Continue Using Debit, Wire, and Automatic Clearing House (ACH) Payments

18. The Debtor also seeks relief from the U.S. Trustee operating guidelines to the extent that they require the Debtor to make all disbursements by check. In particular, the U.S. Trustee operating guidelines require that all receipts and disbursements of estate funds occur by check with a notation representing the reason for the disbursement.

19. Certain of the Debtor's operations are facilitated by transactions done by debit, wire, and other similar methods. Preventing the Debtor from conducting transactions through these methods would impose unnecessary constraints on the Debtor's operations and create additional costs.

Notice

20. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the indenture trustees for the DFC Notes and the AFICA Bonds; and (d) Citibank. In light of the nature of the relief requested, the Debtor submits that no other or further notice is necessary.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief for the Debtor as may be just or proper.

Dated: March 11, 2015
New York, New York

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Proposed Counsel to the Debtor

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re : Chapter 11
 :
Doral Financial Corporation,¹ : Case No. 15-_____ ()
 :
Debtor. :
-----X

INTERIM ORDER GRANTING WAIVER UNDER SECTION 345(b)

Upon the motion (the “Motion”)² of the above-captioned debtor (the “Debtor”), for entry of an order (the “Interim Order”) granting a waiver under Bankruptcy Code section 345(b) with respect to the Debtor’s Bank Accounts; and upon the Flaton Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Flaton Declaration and having heard statements in support of the Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the relief requested in the Motion being in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby

¹ The last four digits of the taxpayer identification number of the Debtor are 2162.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, THAT:

1. The Motion is granted on an interim basis until such time as the Court conducts a final hearing on this matter, to be held on _____, 2014 at ____:____ .m. prevailing Eastern Time (the “Final Hearing”).

2. Subject to the Final Hearing, the requirements of Bankruptcy Code section 345(b) regarding the Bank Accounts are hereby waived.

3. Subject to the Final Hearing, the Debtor, in its discretion, is authorized and empowered to: (i) designate, maintain, and continue to use the Bank Accounts, with the same account numbers as employed prior to the Petition Date; and (ii) deposit funds into and withdraw funds from the Bank Accounts by all usual means, including, without limitation, checks, wire transfers, automated transfers, and other debits.

4. Subject to the terms of this Order, Citibank is authorized and directed to continue to administer the Bank Accounts, as such account was maintained prepetition, without interruption, and in the usual and ordinary course.

5. Subject to the provisions of this Order, Citibank is authorized and directed to accept, honor, and rely upon all representations from the Debtor as to which specific checks, drafts, or wire transfers should be honored or dishonored consistent with orders entered by this Court, whether the checks, drafts, or wire transfers are dated prior to, on, or subsequent to the Petition Date and whether or not Citibank believes that payment is authorized by some other order of this Court; *provided*, that Citibank shall not be held liable for improperly honoring or dishonoring any check, draft, or wire transfer presented, issued, drawn, or debited on the Bank Account on account of a claim (as such term is defined in section 101(5) of the Bankruptcy

Code) arising before the Petition Date, which, at the direction of the Debtor was requested to be honored or dishonored, as the case may be, unless Citibank's actions were grossly negligent.

6. The Debtors shall serve a copy of this Interim Order, by overnight mail, on Citibank within five business days of the entry of this Order.

7. The Debtor is authorized to pay any fees and expenses owed to Citibank, to the extent the Debtor determines, in its good faith business judgment, that Citibank have valid setoff claims pursuant to 11 U.S.C. § 553 (but only to the extent of such claims).

8. The Debtor is authorized and empowered to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

9. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from, or related to, the implementation and interpretation of this Interim Order.

Dated: _____, 2015
New York, New York

UNITED STATES BANKRUPTCY JUDGE