

Hearing Date and Time: April 26, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)

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

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In re:	:	Chapter 11
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ARCAPITA BANK B.S.C.(C), <u>et al.</u>,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**JOINDER OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS’ OMNIBUS RESPONSE TO OBJECTIONS
TO MOTION FOR AN ORDER APPROVING THE DISCLOSURE
STATEMENT AND SOLICITATION AND VOTING PROCEDURES**

The Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (collectively, the “Debtors”) in the above-captioned jointly administered chapter 11 cases hereby joins in the Debtors’ omnibus reply [Docket No. 1017] (the “Reply”) to the objections filed to the *Debtors’ Motion for an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors’ Joint Chapter 11 Plan* [Docket No. 828] (the “Motion”), and respectfully states as follows:

JOINDER

1. During the last several months, the Committee has been engaged in extensive discussions and negotiations internally and with the Debtors and other parties-in-interest with respect to the terms of a restructuring of the Debtors' assets, liabilities, and operations. The results of these negotiations are embodied in the Debtors' *First Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 981] (the "Plan")¹ and further discussed in the *First Amended Disclosure Statement in Support of the Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 983] (the "Disclosure Statement").

2. The Plan proposes an achievable path to the Debtors' emergence from chapter 11 protection that appears to be in the best interests of the Debtors' unsecured creditors, and the Disclosure Statement more than adequately describes its terms. In particular, the Plan (a) strikes an appropriate balance among the interests of creditors of the various Debtors, (b) provides for a workable capital structure and corporate governance framework for the reorganized Debtors, (c) resolves potential conflicts with third-party investors, (d) effectuates a transition from an in-house asset management team to an outsourced arrangement, and (e) resolves the Debtors' relationship with their senior management team.

3. The Committee joins in the Reply for each of the reasons set forth therein, and believes that the Motion should be granted.

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion or the Plan, as applicable.

A. The Disclosure Statement Contains Adequate Information

4. Contrary to the arguments made by the objectors, the Disclosure Statement contains “adequate information” with respect to each of the subjects identified by the objectors, including the governance of the Reorganized Arcapita Group, the management of the Reorganized Debtors’ assets, and the details of Falcon’s plan.

5. Post-Confirmation Governance. The Equity Term Sheet, attached as Exhibit D to the Disclosure Statement, describes in detail the governance of the Reorganized Debtors. Specifically, the Disclosure Statement makes plain that the Reorganized Debtors will be governed by the board of New Arcapita Topco, a newly-formed Cayman Islands company. The members of this board initially will be appointed by the Committee. The Disclosure Statement provides more than sufficient information for a hypothetical investor with respect to the governance of the Reorganized Debtors. See 11 U.S.C. § 1125.

6. Management of Reorganized Debtors’ Assets. The Cooperation Settlement Term Sheet, attached as Exhibit L to the Disclosure Statement, describes the structure and role of the “Disposition Committees,” which are designed to centralize decision-making regarding dispositions and related matters between the Reorganized Debtors and co-investors based on their respective economic interests in each of the Debtors’ portfolio investments. The discussion contained in the Disclosure Statement regarding the monetization of assets post-Effective Date strikes an appropriate balance of adequate disclosure without exposing the Reorganized Debtors’ negotiating positions to undue risk when monetizing their investments.

7. The Cooperation Settlement Term Sheet also describes how the Reorganized Debtors’ assets will be managed on a day-to-day basis after the Debtors

emerge from chapter 11 protection. In particular, the Cooperation Settlement Term Sheet sets forth the terms of an agreement, pursuant to which AIM Group Limited will provide management services for the Debtors' assets. In light of the information contained in the Cooperation Settlement Term Sheet, the Committee believes that there is adequate disclosure with respect to the post-Effective Date management of the Reorganized Debtors and their assets.

8. Falcon Plan. The Debtors have modified the terms of Falcon's sub-plan to address certain of the concerns expressed in objections to the Motion. For example, the Debtors have clarified that Falcon is responsible only for its own administrative expenses and will not be an obligor on the reorganized Debtors' exit facility. The Disclosure Statement also describes Falcon's additional assets evidencing Falcon's ability to fund its administrative expenses and its going-forward obligations, such as the costs of the District Court Action (including the retention of its intercompany claim against Arcapita Bank). The Committee believes that the Disclosure Statement, as amended, adequately addresses Tide's objections to the Disclosure Statement.

B. SCB Objection

9. Although the objection [Docket No. 1003] (the "SCB Objection") of Standard Chartered Bank ("SCB") primarily raises concerns that are appropriately addressed at the confirmation hearing, for disclosure purposes, the Committee believes it is appropriate to address two of SCB's arguments at this time.

10. Cayman Islands Law. The SCB Objection indicates that the common shares of certain Debtors, pledged to secure the SCB Facilities, are not "property of the Debtors or property of the Debtors' estates." SCB Objection at ¶ 5. While SCB holds an equitable mortgage over these shares under Cayman Islands law, the

overwhelming majority of value attributable to the shares resides in the reversionary interest that the Debtors retain, which is property of the estates.

11. Stay Relief. Through the SCB Objection, SCB improperly requests relief from the automatic stay to commence litigation in the Cayman Islands with respect to SCB's rights under Cayman Islands law to the collateral securing the SCB Facilities. This Court has entered an order implementing case management procedures [Docket No. 21, Sched. 1] (the "Case Management Procedures") in these cases, including procedures for requesting relief from the automatic stay. Case Management Procedures at ¶ 33 ("[A] motion for relief from the automatic stay. . . shall be noticed for consideration on the Omnibus Hearing Date that is at least 21 days after the Stay Relief Motion is filed and notice thereof is served upon the Debtors."). SCB has provided no justification for why it is exempt from the Case Management Procedures and should be permitted to obtain relief from the automatic stay through an assertion in an objection to a disclosure statement. The Court should not entertain SCB's request for relief from the automatic stay in this context.

RESERVATION OF RIGHTS

12. While the Committee is in favor of the Debtors' reorganization on the terms set forth in the Plan, and supports the Debtors' request that the Court grant the Motion and approve the Disclosure Statement, the Debtors' successful implementation of the Plan and emergence from chapter 11 is subject to numerous contingencies, including (i) obtaining, on acceptable terms, sufficient financing to render the Plan feasible; (ii) finalizing, and obtaining court approval of, various settlements; (iii) developing an appropriate regulatory framework for the Reorganized Arcapita Group; and (iv) finalizing definitive documentation for various agreements and arrangements under the Plan. The

Committee anticipates that all of the above hurdles will be cleared to its satisfaction and intends to tirelessly work toward this goal.

13. To the extent that disputes arise between the Committee and the Debtors or any other party in interest in the context of resolving any of these contingencies, the Committee may need to object to confirmation of the Plan. Accordingly, the Committee hereby expressly reserves all of its rights to object to confirmation of the Plan on any basis, to seek discovery in connection therewith, and to introduce evidence at, and seek adjournment of, any hearing relating to confirmation of the Plan.

Dated: New York, New York
April 24, 2013

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