

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

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: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **Jointly Administered**  
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**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**

Upon consideration of (a) the motion (the "**Motion**")<sup>1</sup> [Docket No. 828] of Arcapita Bank B.S.C.(c) and certain of its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), for entry of an order (i) approving the Disclosure Statement, (ii) establishing solicitation and voting procedures, (iii) scheduling a confirmation hearing and (iv) establishing notice and objection procedures for the confirmation of the Debtors' Plan; (b) the Disclosure Statement; and (c) the Plan; and the Court having found (i) that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (ii) that the relief requested in the Motion is in the best interests of the Debtors' estates, their Creditors, and other parties in interest; and the Court having considered the statements in support of and in opposition to the relief requested at a hearing 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

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<sup>1</sup> Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion, the Plan and the Disclosure Statement.

establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted as set forth below.

2. The notice of the Hearing by the distribution of the Disclosure Statement Hearing Notice in the form annexed hereto as *Exhibit A* is and the deadline for filing objections or responses to the Disclosure Statement as provided to (i) the U.S. Trustee; (ii) all parties listed on the Master Service List established in these Chapter 11 Cases; (iii) the SEC; (iv) the IRS; (v) the DOJ; and (vi) any other known Holders of Claims against or equity Interests in the Debtors, in the manner set forth in the Motion constituted good and sufficient notice to all interested parties and no further notice is necessary.

3. The Disclosure Statement, as modified in accordance with the statements made at the Hearing, is approved as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, and any objections to the Disclosure Statement not otherwise consensually resolved are overruled.

**A. Record Date**

4. The date of the entry of this Order shall be the record date (the "*Record Date*") as provided in Bankruptcy Rule 3017(d) for the purposes of determining the Creditors and Interest Holders entitled to receive the Solicitation Package.

5. For purposes of voting on the Plan, a transfer of a Claim pursuant to Bankruptcy Rule 3001 shall be recognized only if (i) documentation evidencing the transfer was filed with the Court and served on or before 21 days prior to the Record Date; and (ii) the transferor did not file a timely objection to the transfer. Notwithstanding the foregoing, a transfer of a Claim

related to the Syndicated Facility or Arcsukuk Facility (each as defined in the Plan) will not be recognized for voting purposes unless such transfer occurred prior to the filing of the Chapter 11 Cases and in accordance with the transfer requirements of the underlying documents related to the Syndicated Facility or Arcsukuk Facility (as applicable).

**B. Solicitation Package Approval and Distribution**

6. Not later than **May 2, 2013**, the Debtors shall mail or cause to be mailed (and in addition may email) to the Voting Parties the Solicitation Package containing:

- (a) a written notice (the “*Confirmation Hearing Notice*”), substantially in the form annexed hereto as *Exhibit B*, of (i) entry of the Court’s order approving of the Disclosure Statement, (ii) the deadline for voting on the Plan, (iii) the date of the Confirmation Hearing, and (iv) the deadline and procedures for filing objections to the confirmation of the Plan;
- (b) the Plan (either by paper copy or in “pdf” format on a CD-ROM, at the Debtors’ discretion);
- (c) the Disclosure Statement (either by paper copy or in “pdf” format on a CD-ROM, at the Debtors’ discretion);
- (d) the appropriate Ballot (proposed forms of which are annexed hereto as *Exhibits C1* through *C8*);
- (e) postage prepaid Ballot return envelope; and
- (f) any statements in support of the Plan issued by the Debtors, the Committee, the Ad Hoc Group or the JPLs for inclusion in the Solicitation Package

(collectively, the “*Solicitation Package*”).

7. The Solicitation Packages are hereby approved.

8. The Debtors shall send to each Voting Party (a) only the Solicitation Package appropriate for the Voting Class(es) applicable to such Voting Party, and (b) only one Solicitation Package even if such Voting Party has Claims against or Interests in more than one of the Debtors.

9. Pursuant to Bankruptcy Rule 3017(d), the Debtors are not required to transmit a Solicitation Package to the Non-Voting Holders. Instead, the Debtors shall send to each Non-Voting Holder (i) the Confirmation Hearing Notice and (ii) the Non-Voting Holder Notice substantially in the form annexed hereto as *Exhibit D*, which shall set forth the Non-Voting Classes and identify the treatment of the Claims or Interests in those Classes.

10. In addition to the Confirmation Hearing Notice and the Non-Voting Holder Notice, the Debtors will send to each Holder of Interests in Class 9(a), the Shareholder Assignment Notice, substantially in the form annexed hereto as *Exhibit E*, which provides a summary description of the relevant provisions of the Shareholder Acknowledgement and Assignment and related Plan treatment with respect thereto.

11. The Non-Voting Holder Notice and the Shareholder Assignment Notice are hereby approved.

12. The Debtors shall not be required to transmit Solicitation Packages or other notices, or to re-send Solicitation Packages or other notice, to any person to whom the Debtors sent a Disclosure Statement Hearing Notice which was returned marked “undeliverable” or “moved - no forwarding address” or similar marking, unless the Debtors learn of that person’s new or correct address. The Court finds that this procedure constitutes adequate notice of the Confirmation Hearing and the Voting Deadline and conforms with Bankruptcy Rule 3017(d).

**C. Parties Entitled to Vote**

13. Only the Voting Parties are entitled to vote on the Plan.

14. With respect to Syndicated Facility Claims and Arcsukuk Claims, only Holders of the Syndicated Facility and/or the Arcsukuk Facility (as applicable) as of the Record Date are entitled to vote on the Plan. Any transferee of a Syndicated Facility Claim and/or Arcsukuk

Claim acquired through a participation agreement will not be entitled to vote the Syndicated Facility Claim and/or Arcsukuk Claim acquired, but the transferee may direct the Holder as of the Record Date to vote the Syndicated Facility Claim and/or Arcsukuk Claim as and, to the extent permitted, in the applicable participation agreement.

**D. Claim Objection and Temporary Allowance**

15. The deadline for the filing and serving of objections, if any, to Claims or equity Interests (“*Claim Objections*”), the filing of which means that the Claim or Interest that is the subject of the Claim Objection will not be allowed to vote on the Plan, shall be **May 1, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)** (the “*Voting Purposes Objection Deadline*”). The Debtors’ election not to file an objection to a Claim or Interest prior to the Voting Purposes Objection Deadline shall not constitute an admission that any Claim or Interest shall be allowed or a waiver of any right of the Debtors or any party in interest to object to any Claim or Interest after the Voting Purposes Objection Deadline. The Voting Purposes Objection Deadline is without prejudice to the rights of the Debtors or any other party in interest to object to the amount or allowance of any Claim (including those to which an objection is filed by Voting Purposes Objection Deadline) for purposes other than voting or to later assert additional objections to Claims and Interests that are the subject of a Claim Objection filed prior to the Voting Purposes Objection Deadline.

16. For voting purposes only, the following shall be temporarily allowed: (i) the Claims of Voting Parties, in an amount equal to the face amount of the Claim as set forth in (a) the Schedules, or (b) a timely filed Proof of Claim, and (ii) the Interest in Class 9(g) reflected in Falcon’s stock transfer ledger or similar register as of the Record Date, *except* as provided below:

- (a) If a timely filed Proof of Claim identifies the Claim as contingent or unliquidated and does not specify the amount claimed or does not specify an amount claimed greater than \$0, then for voting purposes the Claim will be temporarily allowed in the amount of one dollar (\$1.00);
- (b) If (i) a Claim or Interest is listed in the Schedules as contingent, unliquidated, or disputed only in part, or (ii) the Debtors file a Claim Objection to all or any portion of a Claim or Interest asserted in a filed Proof of Claim or Proof of Interest on any basis, the Claim or Interest will be temporarily allowed in the amount that is liquidated, non-contingent, and undisputed and not subject to the Claim Objection;
- (c) If an unsecured Claim for which a Proof of Claim has been timely filed also asserts a secured Claim based solely on a right of setoff, the Holder may only vote the unsecured portion of the Claim as to the Plan of the Debtor against whom the Claim is asserted. The Holder will not be allowed to vote the alleged secured Claim; and
- (d) Notwithstanding anything to the contrary contained herein, any Claimant that has filed a Proof of Claim or Proof of Interest that is subject to a Claim Objection on the basis that the Claim or Interest (i) is duplicative of another Claim(s) or Interest(s) within the same Voting Class or (ii) amends or supersedes a previously filed Claim(s) or Interest(s), shall be provided with only one Solicitation Package (as defined below) and one Ballot for voting a single Claim or Interest in such class.

17. Any Claimant that wishes to vote a Claim or Interest, or portion of a Claim or Interest, that is (i) subject to Claim Objection, (ii) that is otherwise not permitted to vote pursuant to the terms of the Plan, the Disclosure Statement or this Order or (iii) that the Creditor or Interest Holder believes is not correctly classified by the Plan, must obtain an order pursuant to Bankruptcy Rule 3018 entered not later than the Voting Deadline temporarily allowing the Claim or Interest for voting purposes, unless otherwise directed by the Court.

18. Any motion for an order temporarily allowing a Claim for voting purposes (a “*Temporary Allowance Motion*”) pursuant to Bankruptcy Rule 3018(a) shall be filed according to the following procedures:

- (a) Any Temporary Allowance Motion must be filed and served on or before the 14th day after the later of (i) service of the Confirmation Hearing Notice or (ii) service of a Claim Objection to the specific Claim, *but in*

any event not later than **May 15, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)** (the “*Temporary Allowance Motion Deadline*”);

- (b) All opposition to any Temporary Allowance Motions shall be filed and served on or before **May 21, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)**;
- (c) A party filing a Temporary Allowance Motion may file a reply to any opposition on or before **May 23, 2013 at 12:00 p.m. (prevailing U.S. Eastern Time)**;
- (d) Any order temporarily allowing Claims or Interests must be entered on or before the Voting Deadline unless otherwise directed by the Court

19. Before or after the filing of a Temporary Allowance Motion, the Debtors and a Claimant may stipulate to the amount or classification its Claim(s) or Interest(s) for voting purposes only pursuant to a stipulation and order filed pursuant to a notice of presentment in lieu of filing other pleadings by the Debtors or the Claimant.

20. Temporary Allowance Motions shall (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Case Management Order; (c) identify the name of the Creditor, Interest Holder or other moving party; (d) identify the Debtor(s) against whom the Claim(s) or Interest(s) is asserted; (e) state with particularity the legal and factual bases relied upon for the relief requested in the Temporary Allowance Motion; and (f) be filed and served not later than the Temporary Allowance Motion Deadline in accordance with the Case Management Order, and in manner to be received by the Notice Parties (with a copy to the chambers of the Honorable Sean H. Lane, United States Bankruptcy Judge).

21. Any Temporary Allowance Motion shall be heard by the Court as it shall direct. If a Temporary Allowance Motion cannot be heard by the Court prior to the Voting Deadline, then the Debtor shall provide the moving Claimant with a provisional Ballot and the moving Claimant will be allowed to submit the Ballot on or before the Voting Deadline which shall be

accepted as a provisional vote to accept or reject the Plan, pending a determination by the Court of the pending Temporary Allowance Motion.

**E. Ballot Approval and Tabulation**

22. GCG, Inc. (“*GCG*” or the “*Balloting and Claims Agent*”) shall tabulate the Ballots and certify to the Court the results of the balloting by **June 3, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)** (the “*Ballot Certification Deadline*”).

23. The Ballots, substantially in the form annexed hereto as *Exhibits C1* through *C8*, and as modified in accordance with the statements made at the Hearing, are hereby approved.

24. To be counted, all Ballots must be properly executed, completed and delivered to the Balloting and Claims Agent at the addresses provided in the Confirmation Hearing Notice annexed to hereto as *Exhibit B* so that the Ballots are actually received on or before **May 30, 2013 at 12:00 p.m. (prevailing U.S. Eastern Time)** (the “*Voting Deadline*”), unless extended by the Debtors.

25. The Debtors may (but are not required to), in their sole and absolute discretion, extend the Voting Deadline. Filing a notice of extension with the Court shall be sufficient notice of any general extension. Additionally, the Debtors may, in their discretion, extend the Voting Deadline for a particular Voting Party without extending the Voting Deadline for all Voting Parties.

26. The following voting procedures, conventions and assumptions shall apply to the tabulation of the Ballots:

- (a) For purposes of the “numerosity” requirement of section 1126(c) of the Bankruptcy Code based on the number and amount of the Claims of those Creditors who actually vote on the Subplans, separate Claims held by a single Creditor in a particular Class as to a particular Debtor will be aggregated and treated as if the Creditor held one Claim in that Class, and all votes related to the Claim will be treated as a single vote to accept or



reject the Subplan. Ballots that fail to conform to the instructions in this Ballot, as provided below, will not be counted for any purpose, including the satisfaction of “numerosity” under section 1126(c).

- (b) Claimants must vote the full amount of their Claims or Interests within a particular Class as to a particular Subplan to either accept or reject the applicable Subplan and may not split their vote as to any single Subplan. A Ballot that partially rejects and partially accepts a Subplan *shall not be counted for any purpose* as to that Subplan.
- (c) Any Ballot that both accepts and rejects a Subplan *shall not be counted for any purpose* and will be treated as if no Ballot was submitted as to that Subplan.
- (d) Any Ballot that fails to either accept or reject a Subplan *shall not be counted for any purpose* and will be treated as if no Ballot was submitted as to that Subplan.
- (e) A Ballot which is otherwise properly executed and received prior to the Voting Deadline, that includes a vote to either assume or reject one or more Subplans, but fails to include a vote to either accept or reject another Subplan on which the Claimant is entitled to vote, shall be counted only as to the Subplan on which the Claimant voted *and shall not be counted for any purpose* as to the Subplan on which the Claimant failed to vote.
- (f) Unsigned Ballots shall not be counted for any purpose.
- (g) Only Ballots that are timely received prior to the Voting Deadline will be counted. Ballots emailed or postmarked prior to the Voting Deadline, but received after the Voting Deadline, *shall not be counted for any purpose*, unless the Debtors, in their sole discretion, elect to accept the Ballot.
- (h) Ballots that are not legible, that are not properly completed, that fail to contain sufficient information to permit the identification of the Claimant or the authority of the party acting on behalf of a Claimant, or otherwise do not comply with the instructions in this Ballot, *shall not be counted for any purpose* unless the Debtors, in their sole discretion permit the voting Claimant to cure any defect or provide the missing information.
- (i) If, prior to the Voting Deadline, a Claimant casts more than one Ballot as to the same Claim(s) or Interest(s) and as to the same Subplan(s), the last properly executed Ballot received prior to the Voting Deadline shall be deemed to be the Claimant’s final vote and shall supersede any prior Ballots. A duplicate Ballot received after the Voting Deadline shall not be counted and shall not supersede any earlier Ballot, except as provided above.

- (j) If a Claimant simultaneously submits duplicate Ballots with votes that contradict one another with respect to the same Claim and as to the same Plan or Subplan, then neither Ballot *shall be counted for any purpose as to any Subplan on which the Claimant votes to both accept and reject the Subplan.*
- (k) Each Claimant shall be deemed to have voted the full amount of its Claim or Interest as to the Plan or any Subplan on which a timely Ballot is received and is counted.
- (l) Except as otherwise ordered by the Bankruptcy Court, any issue as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Balloting and Claims Agent and the Debtors in their sole discretion, which determination shall be final and binding.

27. Prior to mailing the Disclosure Statement or Solicitation Packages, the Debtors may fill in any missing dates and other information, correct any typographical errors, and make such other non-material, non-substantive changes as they deem appropriate or as otherwise ordered by the Court at the Hearing.

28. GCG is authorized, but not directed, to contact Creditors and Holders of Interests that have submitted invalid Ballots to correct the defect in such party's Ballot.

#### **F. Confirmation Hearing**

29. The Confirmation Hearing Notice substantially in the form annexed hereto as *Exhibit B* is hereby approved.

30. A hearing shall be held before this Court on **June 11, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)**, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, or as soon thereafter as counsel can be heard, to consider confirmation of the Plan (the "**Confirmation Hearing**").

31. The Debtors are authorized to publish notice of the Confirmation Hearing in the manner set forth in the Motion.

32. The Confirmation Hearing may be adjourned from time to time without further notice to Claimants and other parties in interest other than an announcement of the adjourned date in open court, filed in a notice on the Court's docket, or as otherwise indicated in any notice of agenda of matters scheduled for a particular hearing that is filed with the Court.

**G. Plan Objection Procedures**

33. Any objection or response to Confirmation of the Plan shall conform to the Plan Objection Procedures set forth below:

- (a) Objections and responses, if any, to the Confirmation of the Plan must (i) be in writing, (ii) conform to the Bankruptcy Rules, the Local Rules and the Case Management Order, (iii) set forth the name(s) of the objecting party or parties, (iv) set forth the nature and amount of the Claim(s) or equity interest(s) held or asserted by each objecting party or parties against the Debtor(s), and (v) state with particularity the legal and factual bases relied upon for the objection or response.
- (b) Objections to Confirmation of the Plan shall be filed electronically with the Court on the Docket pursuant to the Case Management Order approved by this Court and the Court's General order M-399 (available at <http://www.nysb.uscourts.gov/sites/default/files/m399.pdf>) by registered users of the Court's case filing system and by all other parties in interest on a 3.5 inch disk or flash drive, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to the chambers of the Honorable Sean H. Lane, United States Bankruptcy Judge, One Bowling Green, New York, New York 10004-1408, Room 701), in accordance with the customary practices of the Court and General Order M-399, to the extent applicable.
- (c) Objections to Confirmation of the Plan shall be served in accordance with General Order M-399 on the Notice Parties so as to be received on or before **May 30, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)** (the "**Plan Objection Deadline**").
- (d) All objections not timely filed and served in accordance with the provisions of this Motion shall be deemed waived.

34. The Debtors shall file any response to any objections to confirmation of the Plan, and any briefs and/or affidavits in support of confirmation of the Plan, by no later than **June 6, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)**.

**H. Procedures as to Proposed Cure Amounts for Contracts Assumed Pursuant to the Plan**

35. The following procedures are approved for establishing the Cure Amounts for the Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan:

- (a) A Notice of (i) Assumption of Executory Contracts and Unexpired Leases, (ii) Cure Amounts, and (iii) Deadline to Object to Cure Amounts and Assumption (the "***Cure Notice***") in a form substantially similar to the notice annexed hereto as ***Exhibit F***, shall be served on the counter parties to all Assumed Contracts and Leases by **May 17, 2013** (the "***Cure Notice Filing Date***"). The Cure Notice will include the Cure Amount that the Debtors believe must be paid in order to cure all monetary defaults under each of the Assumed Contracts and Leases;
- (b) the non-debtor parties to the Assumed Contracts and Leases shall have until the Plan Objection Deadline, which deadline may be extended in the sole discretion of the Debtors, to object (a "***Cure Objection***") to the (i) Cure Amounts listed by the Debtors and to propose alternative cure amounts, and/or (ii) proposed assumption of the Assumed Contracts and Leases under the Plan; *provided, however*, that if, subsequent to the Cure Notice Filing Date, the list of the Assumed Contracts and Leases is amended pursuant to the Plan to add a contract or lease or to reduce any Cure Amount, except where such reduction was based upon the mutual agreement of the parties, the non-debtor party thereto shall have until seven calendar days after service of the amended Cure Notice to object thereto or to propose an alternative Cure Amount(s) (the applicable deadline to file a Cure Objection, the "***Cure Objection Deadline***"); and
- (c) any party objecting to the Cure Amount(s), whether or not such party previously has filed a Proof of Claim with respect to amounts due under the applicable Assumed Contract or Lease, or objecting to the potential assumption of such Assumed Contract or Lease, shall be required to file and serve a Cure Objection, in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Assumed Contract or Lease and/or any and all objections to the potential assumption of such Assumed Contract or Lease, together with all documentation supporting such cure Claim or objection, upon each of the Notice Parties so that the ***Cure Objection is actually received by them no later than the Cure Objection Deadline***. If a Cure

Objection is timely filed and the parties are unable to settle such Cure Objection, the Court shall determine the amount of any disputed Cure Amount(s) or adjudicate such Cure Objection at a hearing to be held at the time of the Confirmation Hearing or such other hearing date to which the parties may mutually agree or ordered by the Court. The Debtors may, with the consent of the Committee, extend the Cure Objection Deadline without further notice, but are not obligated to do so.

36. The Cure Notice substantially in the form annexed hereto as *Exhibit F* is hereby approved.

37. The Debtors and GCG are authorized to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order, including, but not limited to, (i) the dissemination of true and correct translations of all or part of the Solicitation Package and notices in Arabic and other relevant languages, and (ii) conducting in-person informational presentations to Creditors and Holders of Interests in selected locations within the Middle East attended by the Debtors and/or members of the Committee (and their respective professionals), which presentations may include a generalized description of the Plan and Disclosure Statement, the Ballots, the voting procedures and other related information.

38. The Court shall retain jurisdiction with respect to all matters arising under or relating to the implementation and enforcement of this Order.

Dated: New York, New York  
April 26, 2013

/s/ Sean H. Lane  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE