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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	:	**Case No. 12-11076 (SHL)**
Debtors.	:	**Jointly Administered**

SECOND OBJECTION OF CAPTAIN HANI ALSOHAIBI TO THE MOTION OF FIRST ISLAMIC INVESTMENT BANK B.S.C.(c) N/K/A ARCAPITA BANK B.S.C.(c) AND ITS FELLOW DEBTORS FOR AUTHORITY TO OBTAIN REPLACEMENT FINANCING FROM GOLDMAN SACHS TO REPAY EXISTING FINANCING [DOCKET NO. 1157]

AND

REQUEST THAT THE HEARING SCHEDULED FOR JUNE 24, 2013 CONCERNING APPROVAL OF THE PROPOSED FINANCING BE ADJOURNED

AND

AN INDEPENDENT SHARI'AH BOARD BE APPOINTED

Comes now before the Honorable United States Bankruptcy Court for the Southern District of New York Captain Hani Alsohaibi, a party in interest in the above-captioned bankruptcy cases, by and through his undersigned counsel, the Law Offices of Tally M. Wiener, Esq., and respectfully submits this Objection (the "*Second Objection*")

to the relief requested by First Islamic Investment Bank B.S.C.(c) n/k/a Arcapita Bank B.S.C.(c) and its fellow debtors ("*Arcapita*" or the "*Debtors*") in the *Debtors' Motion for Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 Authorizing the Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing* [Docket No. 1157] (the "*Motion*"). In support of the Second Objection and the accompanying request that the hearing scheduled for June 24, 2013 concerning approval of the proposed financing be adjourned, Captain Alsohaibi respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Second Objection and the request for adjournment pursuant to 28 U.S.C. §§ 157 and 1334 to the extent it has jurisdiction to consider the Motion. Captain Alsohaibi reserves all rights concerning jurisdiction and venue, the Debtors' insolvency filings in the United States of America and in the Cayman Islands having frustrated his reasonable commercial expectations.

BACKGROUND

2. On March 18, 2012, the Board of Directors of Arcapita, a Bahrain-registered joint stock company, authorized the filing of voluntary bankruptcy proceedings. The next day, Arcapita and certain of its affiliates filed bankruptcy petitions with the United States Bankruptcy Court for the Southern District of New York under chapter 11 of the Bankruptcy Code. Arcapita Investment Holdings Limited, a wholly owned debtor subsidiary of Arcapita, later petitioned for a winding-up order in the

Cayman Islands.[1] Falcon Gas Storage Co., Inc. became a debtor under chapter 11 of the Bankruptcy Code on April 30, 2012.

3. Arcapita filed its first motion for an order extending its exclusive period to file a chapter 11 plan on June 12, 2012, nearly one year ago, telling a story about seeking bankruptcy relief in the USA on an "emergency basis" [Docket No. 237, ¶ 1], which contradicts the Declaration filed on the day of its first chapter 11 filing [Docket No. 6, ¶ 26, "the Debtors carefully considered reorganization options under the laws of various other jurisdictions."].

4. Arcapita filed its second extension motion on September 25, 2012. Therein Arcapita represented: "To allay any concern that the case should not be delayed by further extensions, the Debtors are only asking for 60 days and, if the Motion is granted as requested, the Debtors also agree that they will not seek a further extension of the exclusive period to file a plan of reorganization." [Docket No. 509, ¶ 4]. Arcapita went on to promise:

> 25. To insure there is no waste of time and no danger that the estates may be left with no plan in the event a new equity plan cannot be confirmed because the equity raise proves unsuccessful, the Debtors further commit that, on or before December 14, 2012, the Debtors will file a plan of reorganization that provides, in the same plan document, for the Debtors' emergence from chapter 11 pursuant to (a) a "new money" plan, provided that the new equity infusion is committed and available when the confirmation hearing is held or, if it is not, (b) pursuant to an alternative "stand alone plan" that provides for the managed disposition and distribution of the Debtors' assets (the "***Toggle Plan***").

[1] Presumably understanding that the Debtors would be unable to achieve recognition in New York of the Arcapita Investment Holdings Limited insolvency proceedings in the Cayman Islands under the well-reasoned ruling of the Honorable Burton R. Lifland in *Bear Stearns*, they seem to be holding off on seeking recognition in order to establish grounds for recognition under the rationale of Judge Lifland's subsequent ruling in the *Fairfield* chapter 15 case. This strategy is ill-conceived and ill-fated.

> 26. Proceeding as described above ensures that, one way or another, by December 14, either (a) the Debtors will be filing motion to approve a disclosure statement supporting the Toggle Plan, solicitation procedures and a confirmation schedule or (b) exclusivity will automatically terminate and any party may then file a plan.

[Docket No. 509, ¶¶ 25-26].

5. Arcapita went on to file a third extension motion on December 11, 2012 [Docket No. 701], a fourth extension motion on December 19, 2012 [Docket No. 728], a fifth extension motion on January 3, 2013 [Docket No. 759], a sixth extension motion on January 11, 2013 [Docket No. 770], and a seventh extension motion on January 25, 2013 [Docket No. 806]. Arcapita also filed a motion to extend its exclusive period for soliciting acceptance of a chapter 11 plan [Docket No. 911].

6. Arcapita's chapter 11 proceedings having dragged on and on, and professional fees having risen, Arcapita was in need of funds.

7. Goldman Sachs considered providing debtor-in-possession financing to Arcapita, then passed and collected a $250,000 award for having made a substantial contribution to the case [Docket No. 1074]. Goldman Sachs' involvement in the case appears to have increased appetite for lending funds to Arcapita, as CF ARC LLC and Fortress Credit Corp. (together, "*Fortress*") provided debtor-in-possession financing.

8. Goldman Sachs sought to provide to Arcapita financing in a principal amount of $175 million, to allow Arcapita to repay the Fortress facility, which was scheduled to mature on June 14, 2013.

9. On May 27, 2013, Arcapita filed the Motion seeking court approval, and setting an objection deadline of June 3, 2013.

10. Arcapita did not include the proposed Goldman Sachs financing agreement with the Motion, which clearly violates the letter and spirit of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York.[2]

11. Federal Rule of Bankruptcy Procedure 4001(c) states:

> (c) Obtaining Credit.
>
> (1) Motion; Service.
>
> (A) Motion. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.
>
> (B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:
>
> (i) a grant of priority or a lien on property of the estate under §364(c) or (d);
>
> (ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to

[2] *See* Local Bankruptcy Rule for the Southern District of New York 4001-2.

secure the claim, or the use of property of the estate or credit obtained under §364 to make cash payments on account of the claim;

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under §363(c), or request authority to obtain credit under §364;

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) the indemnification of any entity;

(x) a release, waiver, or limitation of any right under §506(c); or

(xi) the granting of a lien on any claim or cause of action arising under §§544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(emphasis added)

12. The non-inclusion of standard and mandatory information deprived parties in interest including Captain Alsohaibi, who had invested in Arcapita's success in good faith, a meaningful opportunity to assess the relief requested so as to determine whether to object and, if so, on what grounds.

13. Arcapita was aware of the defects in its filings. The Motion states:

> As noted previously, the DIP Agreement will be filed by the Debtors as a supplement to this Motion prior to the hearing to consider this Motion. This summary, therefore, is qualified in its entirety by the provisions of the Commitment Documents attached hereto, and ultimately the definitive DIP Agreement and/or the DIP Order to be filed by the Debtors, as applicable. . . . To the extent there are any conflicts between this summary and the terms of the definitive DIP Agreement and/or the DIP Order, as applicable, the terms of the DIP Agreement and/or the DIP Order, as applicable, shall govern.

[Motion, footnote 7].

14. On June 6, 2013 – *after the objection deadline had passed* - Arcapita filed a Supplement [Docket No. 1216]. The Supplement includes the "definitive form of the DIP Budget" that had been missing from the Motion "for the consideration of the Court and other parties in interest." [Docket No. 1216, ¶¶ 1, 2]. Arcapita then filed a Second Supplement, which included the agreement, but not the statutorily mandated cross-references [Docket No. 1224]. The PDF filed by Arcapita is 186 pages long and, even those very well-versed in Shari'ah law would find it difficult to get through it in time to formulate a view as to whether it is Shari'ah compliant prior to the hearing on approval of the Motion.

15. On June 7, 2013, Captain Alsohaibi filed an Objection to entry of a final order approving the proposed Goldman Sachs [Docket No. 1227].

16. Upon information and belief, later that day Arcapita Investment Holdings Limited, which is subject to this Court's supervision and court supervision in the Cayman Islands, obtained approval in the Cayman Islands for a proposed Goldman Sachs financing. It is unclear whether approval in the Cayman Islands was obtained for the financing agreement filed with this Court just the day before, the Revised Credit Agreement discussed below, which was not filed with this Court until June 14, 2013, or another financing agreement not filed with this Court.

17. On Monday, June 10, 2013, this Court conducted a Chambers conference, followed by a hearing on the Motion.[3] At the hearing, undersigned counsel advised the Court she believed -- and Arcapita did not deny -- that approval of a proposed Goldman Sachs financing had already been obtained in the Cayman Islands. Counsel also advised that, to her knowledge, no chapter 15 proceedings have been brought by the Caymanian Joint Official Liquidators and, therefore, the Court was without authority to approve any financing for Arcapita on the basis it had been approved in the Cayman Islands.[4]

[3] Less than an hour before the hearing on the Motion, Arcapita served its third supplement to the Motion [Docket No. 1234].

[4] Chapter 15 applies where "a foreign proceeding and a case under this title [i.e. title 11, the Bankruptcy Code] with respect to the same debtor are pending concurrently." 11 U.S.C. § 1501(b)(3). Arcapita Investment Holdings Limited is the subject of a foreign proceeding and a case under title 11 and, therefore, chapter 15, by the express terms of its opening provisions, applies.

All rights are reserved concerning the absence of a timely chapter 15 filing including, but not limited to, the right to object to recognition of both the US and Cayman Islands proceedings and orders entered in or in furtherance of those proceedings.

18. The Court granted Captain Alsohaibi the relief he requested by approving the proposed Goldman Sachs financing on only an interim basis[5] and setting a final hearing for Monday, June 24, 2013, at 2 pm [Docket No. 1245].

19. On Tuesday, June 11, 2013, Arcapita filed a Notice of Hearing on the Motion. The Notice set a deadline of Monday, June 17, 2013 at 4 pm, with respect to "objections to the Motion (the '**Objections**')" and a deadline for "replies to any Objections" of Thursday, June 20, 2013, at 4 pm [Docket No. 1254, page 2].

20. After the close of business on Friday, June 14, 2013, Arcapita served a revised financing agreement, with a redline reflecting extensive changes [Docket No. 1259] (the "*Revised Financing Agreement*"). Having gotten away with violating the notice rules discussed above requiring, among other things, the filing of a credit agreement with the Motion seeking its approval, Arcapita again violated the notice rules.

21. The June 24, 2013 hearing was to be on the Motion, *see* Notice of Hearing [Docket No. 1254], and the proposed Goldman Sachs financing agreement described but not included with the Motion. If a hearing goes forward with respect to the Revised Financing Agreement, it would be contrary to the Notice of Hearing. It would also be contrary to the interim order, which contemplated that a final hearing would be on the Motion and the relief provided in the interim order concerning the Motion [Docket No. 1245, page 5 (defining Final Hearing), and ¶ 37 (setting Final Hearing)].

[5] Whereas statements concerning the timeliness of Captain Alsohaibi's objection are in bold italics, absent from the interim order, which was presumably submitted by Arcapita on an *ex parte* basis, is a discussion of Arcapita's unexcused and inexcusable failure to comply with Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule for the Southern District of New York 4001-2 [Docket No. 1245]. As Arcapita knows, that failure made it impossible for Captain Alsohaibi and other parties in interest to review the terms of the proposed Goldman Sachs financing prior to the objection deadline.

22. We file this Second Objection due to inability to obtain so much as a two day adjournment of the objection deadline on a consensual basis, and because we are unable to obtain court-ordered relief from the objection deadline until the day of objection deadline at earliest. We reserve all rights, including the right to supplement this Second Objection.

ARGUMENT

23. Bahrain-registered Arcapita Bank B.S.C.(c) ("*Arcapita Bank*") represented its business and those of its subsidiaries in the first day filings in these chapter 11 cases, *see, e.g.*, Docket No. 4, as: "principal activities include investing for its own accounts and providing investment opportunities to third-party investors *in conformity with Islamic Shari'ah rules and principles*" (emphasis added).

24. Arcapita Bank is registered as an Islamic wholesale bank with the Central Bank of Bahrain (the "*CBB*"). Among the rules governing Arcapita Bank is CBB rule HC 9.1.1, which states that "Banks which refer to themselves as "Islamic" must follow the principles of Islamic Shari'a."[6]

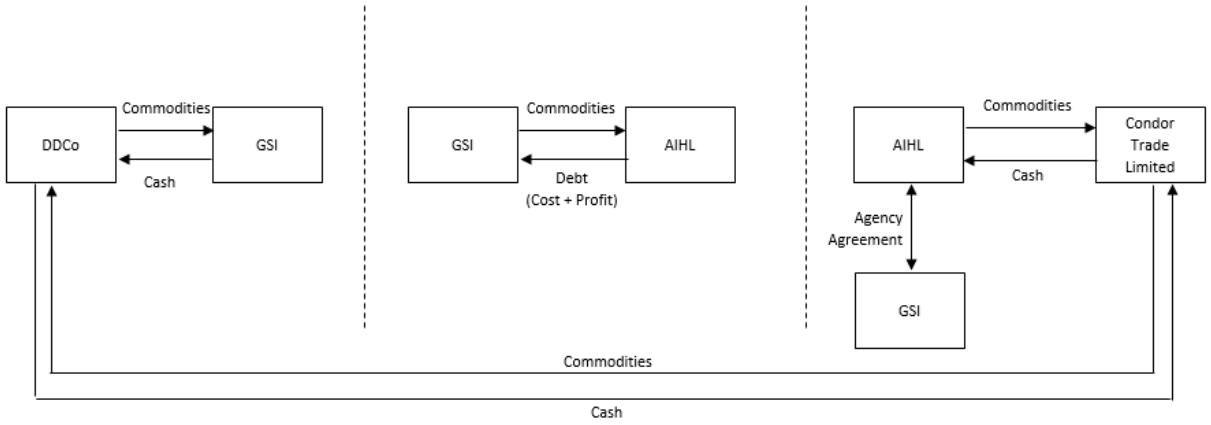
25. Arcapita Bank is required under CBB rule HC 9.1.2 to "subject to additional governance requirements and disclosures to provide assurance to stakeholders that they are following Shari'a Principles. In ensuring compliance with Shari'a principles, each Islamic bank licensee must establish an independent Shari'a Supervisory Board consisting of at least three Shari'a scholars and complying with AAOIFI's Governance Standards for Islamic Financial Institutions No.1 and No.2."

[6] The laws of Bahrain are available online at http://cbb.complinet.com/cbb/microsite/. *See, e.g.,* the rule in the text accompanying this footnote, which is available on the Central Bank of Bahrain website at: http://cbb.complinet.com/cbb/display/display.html?rbid=1821&element_id=2509

26. Arcapita Bank is required under CBB rule RM 2.2.14 to "receive their Shari'a Supervisory Board Fatwa on all new financing proposals that have not been proposed before or amendments to existing contracts." Arcapita Bank is further required under CBB rule HC 1.3.15 to "comply with all [Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)] issued accounting standards as well as the Shari'a pronouncement issued by the Shari'a Board of AAOIFI."

27. The transaction proposed in the Revised Financing Agreement is described to the court as a Shari'ah-compliant *murabaha* (*bona fide* sale transaction with payment of profit for deferred payment of Deferred Purchase Price). However, the transaction is in actuality an organized *tawarruq* (literally, a monetization).[7]

28. The documentation describes the transactions in the Revised Financing Agreement as if they are separate *bona fide* sale transactions in order to mischaracterize the transactions as a permissible *murabaha* rather than correctly as an impermissible organized *tawarruq*.

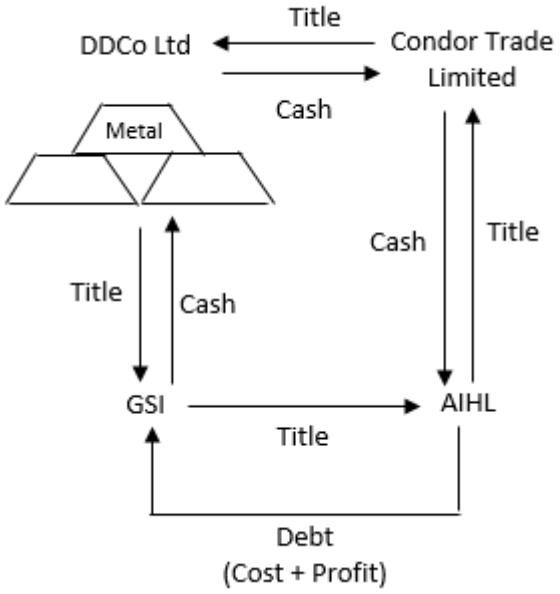


[7] QFinance, a resource on Islamic finance created by Bloomsbury Information Ltd and the Qatar Financial Centre Authority, defines *tawarruq* as "an arrangement in which somebody purchases an item from a bank on a deferred payment plan, then sells it immediately to obtain money." http://www.qfinance.com/dictionary/tawarruq

29. In the chapter 11 proceedings of Enron Corp *et al.* (Bankr. S.D.N.Y. (AJG), a similar transaction was objected to in the Reorganized Debtors' Fourth Amended Complaint for the Avoidance and Return of Preferential Payments, and Fraudulent Transfers, Equitable Subordination, and Damages, Together with Objections and Counterclaims to Creditor Defendants' Claims (at ¶ 349):

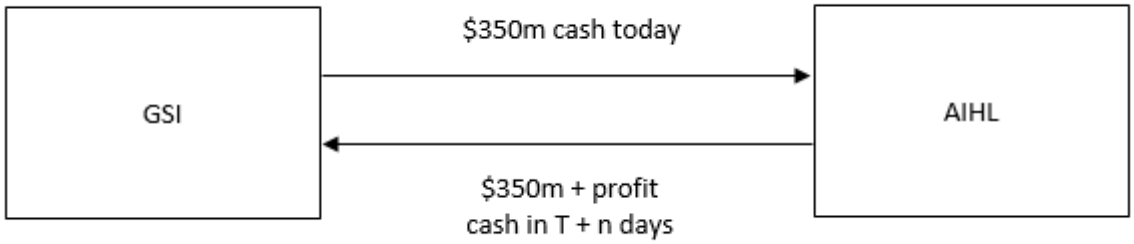
> Like other Enron prepay transactions, the Mahonia transactions included three steps that were precisely calibrated so that they collectively functioned as an unsecured loan. While each step ostensibly included commodity risk, the risk flowed in a circle between Chase, its SPE, and Enron such that the deliveries netted out and "all that remained was the initial advance and the repayment of same, with interest, over time." [….] At the end of the day, Enron had received cash up-front from the Mahonia entity – cash that Chase funded – and Enron had agreed to pay the cash plus interest back to Chase on a prearranged schedule.

30. On substance, the Enron transactions are identical to the transaction described above and when the transaction is reconfigured to show the exchange of title to the metal, the intent of the transaction becomes nothing more than an exchange today of cash in exchange for more cash at a future date, a disguised loan with interest, which violates Shari'ah principles on the giving or receiving of interest (*riba*).



31. As the diagram indicates above, the commodities brokers, DDCo Ltd ("*DDCo*") and Condor Trade Limited ("*Condor*") end the series of transactions flat. During the transactions, which occur on the same day, nearly simultaneously, each delivers and receives title to an equal quantity of metal and delivers and receives cash in the Cost Price of the metals. The key transaction that makes this possible is the undisclosed Netting Letter that allows DDCo and Condor to net their claims against one another and obviate the need for physical delivery of the metals. Upon removing the parties which neither, on net, receive or deliver cash or metals, the transaction looks like a more familiar loan with interest transaction where one party provides cash today in exchange for more cash in the future:[8]

[8] *See* Monthly Operating Report for the Period from May 1, 2013 to May 21, 2013 in which the Debtors admit that they have been paying interest to Fortress on account of its debtor-in-possession financing, which Goldman Sachs is seeking to refinance [Docket No. 1260, page 15 note 3].



32. AAOIFI Shari'ah Standard 30, Article 4/5 makes the following stipulation regarding organized *tawarruq*:

> The commodity (object of monetisation) must be sold to a party other than the one from whom it was purchased on a deferred payment basis (third party), so as to avoid *e'na* which is strictly prohibited. Moreover, the commodity should not return back to the seller by virtue of prior agreement or collusion between the two parties or according to tradition.

E'na restrictions limit the ability of Islamic financial institutions to construct transactions that involve sales of items, including commodities, between only two parties in order to create a debt obligation involving money provided today in exchange for more money due at a future date. The transaction in the Revised Financing Agreement -- specifically the Netting Agreement -- allows the metals to return to DDCo on the same day as it sold the metals to GSI, creating the prohibited *e'na* as described in the AAOIFI Shari'ah Standard, compliance with which is required under the CBB rule quoted at paragraph 26 above.

33. The Organization of Islamic Cooperation (f/k/a Organization for the Islamic Conference) established an International Islamic Fiqh Academy[9] (emphasis added):

[9] OIC website at: http://www.oic-oci.org/page_detail.asp?p_id=64#FIQH

1. To achieve the theoretical and practical unity of the Islamic Ummah by striving to have Man conform his conduct to the principles of the Islamic Sharia at the individual, social as well as international levels.
2. To strengthen the link of the Muslim community with the Islamic faith.
3. To draw inspiration from the Islamic Sharia, *to study contemporary problems from the Sharia point of view and to try to find the solutions in conformity with the Sharia through an authentic interpretation of its content.*

34. The Arcapita Shari'ah board includes Shaikh Abdullah Sulaiman Al Meneea (chairman) who is an Expert of the Islamic Fiqh Academy, Justice Muhammad Taqi Usmani who is a Member of the Islamic Fiqh Academy, and Dr. Abdul Sattar Abdul Kareem Abu Ghuddah who is a Member of the Islamic Fiqh Academy.[10] Arcapita Shari'ah board member Shaikh Essam Mohamed Ishaq is a Member of the Union Council of the Council of Member States of the Organization of the Islamic Conference, but is not a Member of the Islamic Fiqh Academy.[11]

35. The Islamic Fiqh Academy met from April 26 – 30, 2009 in Sharjah, United Arab Emirates to discuss and rule on the Shari'ah permissibility of *tawarruq*. The Islamic Fiqh Academy differentiated between classical *tawarruq*, where the purchase sells the merchandise in exchange for cash with a separate third party without the knowledge of or participation of the original seller, and organized *tawarruq*. The Islamic Fiqh Academy defines organized *tawarruq* as:

> a person (*mustawriq*) buys a merchandise from a local or international market on deferred price basis. The financier arranges the sale agreement either himself or through his agent. Simultaneously, the mustawriq and the financier executes the

[10] Arcapita website at: http://www.arcapita.com/about/corpinfo/shariah.html

[11] Id. & Zawya Shariah Scholars database at: http://www.zawya.com/shariahscholars/sch_profile.cfm?scholarid=1

transactions, usually at a lower spot price.[12]

36. The final ruling from the Islamic Fiqh Academy is:

> It is not permissible to execute both *tawarruq* (organised and reversed) because simultaneous transactions occurs between the financier and the *mustawriq*, whether it is done explicitly or implicitly or based on common practice, in exchange for a financial obligation. This is considered a deception, i.e. in order to get the additional quick cash from the contract. Hence, the transaction is considered as containing the element of *riba*.

37. The transaction contained in the Revised Financing Agreement is clearly an organized *tawarruq* and is therefore prohibited on Shari'ah grounds under the Islamic Fiqh Academy *fatwa.*

38. Further support that the transaction in the Revised Financing Agreement is an organized *tawarruq* is provided in an article published by Reuters written by Asim Khan, the Managing Director of Shari'ah advisory firm Dar al-Istithmar, the Shari'ah advisors to Goldman Sachs International's *sukuk* (Islamic bond) programme which was criticized for being a *tawarruq*[13]. Khan argued that a *sukuk* (Islamic bond) programme announced by Goldman Sachs International (GSI) was a *murabaha* and not a *tawarruq*. He described two clear conditions that distinguish a *murabaha* from a *tawarruq*:[14]

> For this to be a tawarruq transaction, it would require the presence of additional elements: a) GSI (not GSCL, as above) buying the commodities solely with the intention of immediately selling the commodities to a third party to generate cash, and/or b) GSI must sell the commodities back to the original supplier or its nominee.

39. In the GSI sukuk transaction, GSCL, a Special Purpose Vehicle (SPV) issued *sukuk* certificates to investors to purchase Shari'ah-compliant metals and then

[12] Islamic Fiqh Academy Resolution 179 (19/5) available in original Arabic and English translation from the International Shari'ah Research Academy for Islamic Finance (ISRA): http://bit.ly/1bI8hM8

[13] Mohammed Khnifer. "Goldman sucks?" *Islamic Business & Finance*, Issue 69, available at: http://bit.ly/19c9dJa

[14] Asim Khan article at: http://in.reuters.com/article/2012/01/02/goldman-sukuk-idINDEE80106620120102

resold those metals to GSI. The *sukuk* transaction did not have an on-sale agreement to sell the metals and generate cash for GSI.

40. Under the Revised Financing Agreement, the On-Sale Agreement and Netting Letter meet both of the conditions specified by Khan for the transaction to be a *tawarruq*:

1. AIHL purchases the commodities from GSI and appoints GSI as its agent to sell the metals to Condor on the same day;
2. AIHL sells the metals to Condor which is allowed under the agreement to return the metals to the original supplier, DDCo, under the Netting Letter.

41. The *fatwa* Arcapita relies upon to establish Shari'ah compliance, annexed hereto as **Exhibit A**, includes only the signature of Shaikh Esam M. Ishaq, the sole Shari'ah board member who is not an Expert for or Member of the Islamic Fiqh Academy.

42. The CBB rule HC-9.2.1 requires that every Islamic bank licensee must establish an independent Shari'a Supervisory Board consisting of at least three Shari'a scholars: "In ensuring compliance with Shari'a principles, each Islamic bank licensee must establish an independent Shari'a Supervisory Board consisting of at least three Shari'a scholars and complying with AAOIFI's Governance Standards for Islamic Financial Institutions No.1 and No.2."

43. The *fatwa* is printed on Arcapita's letterhead, raising questions of whether the Shari'ah board should be relied upon by the Debtors' estate and casting doubt upon the independence of the Shari'ah board from Arcapita's management. The signature by only one of the Shari'ah board members fails to comply with the CBB rule that requires Shari'ah approval from at least three Shari'ah scholars.

44. Arcapita has a presence in Saudi Arabia, through sales of securities to Saudi nationals and as a result the parties to this transaction must have made their required *zakat* payments, which are collected by the Department of Zakat and Income Tax in the Kingdom of Saudi Arabia. Goldman Sachs does not indicate in the Revised Financing Agreement that it has paid *zakat* to the Department of Zakat and Income Tax, and therefore is not able to be a party to this Shari'ah-compliant transaction.

45. The transaction is not a *murabaha* as the Debtors claim and is an organized *tawarruq*, which is not Shari'ah-compliant according to the *fatwa* produced by the Islamic Fiqh Academy, a reputable and independent Shari'ah body that includes in its membership three of the four Shari'ah board members that Arcapita lists on its website. None of these three Shari'ah board members signed the *fatwa*. This casts doubt on the Shari'ah-compliance of the transaction in the Revised Financing Agreement and also falls short of the requirements of the laws of Bahrain, which regulate Arcapita.

46. For the foregoing reasons, the Motion seeking a entry of an final order approving the proposed Goldman Sachs refinancing, be it in the original terms presented prior to entry of an interim order or on the terms in the Revised Financing Agreement submitted after entry of the interim order should be **DENIED**. For the same reasons, the Exit Facility is, in its entirety, not Shari'ah compliant and should not be condoned by this Court.

WHERFORE Captain Alsohaibi respectfully seeks an adjournment of the hearing on entry of a final order due to the filing of the Revised Financing Agreement, which materially varies, on inadequate notice, the terms of the proposed Goldman Sachs

financing approved in the interim order and is, in any event, not Shari'ah compliant or compliant with the laws of Bahrain.

Should the Debtors or any other interested parties take a contrary view of Shari'ah compliance in reply papers or otherwise, they can only raise a dispute. Captain Alsohaibi respectfully requests that the Court abstain from ruling on any disputes concerning Shari'ah compliance or the related requirements of the laws of Bahrain and that no final order be entered until an independent Shari'ah supervisory board answerable to and compensated by the estate approves any financing to be extended to the Debtors and all documents referenced in or contemplated by related documents including, for example, netting and syndication agreements.

[concluded on the following page]

In assessing the request for an appointment of an independent Shari'ah supervisory board, the Court should please consider that (i) Arcapita's Shari'ah supervisory board does not appear to have approved the chapter 11 filings [Docket No. 1, Arcapita Bank S.S.C.(c) Board Minutes, pages 21 - 32] and (ii) only one member -- not all, and not the Chairman -- signed the *fatwa* that is condition precedent to the original proposed Goldman Sachs financing. It appears that the members of Arcapita's own Shari'ah supervisory board do not believe that the chapter 11 filings were Shari'ah compliant or that the proposed Goldman Sachs financing is Shari'ah compliant so, absent an assessment by an independent Shari'ah supervisory board, why should anyone else?

Dated: New York, New York
June 17, 2013

Respectfully submitted on behalf of
Captain Hani Alsohaibi by:

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ARCAPITA

June 13, 2013

Arcapita Bank B.S.C.(c)
P.O. Box 1406
Manama
Bahrain

Gentlemen:

The management of Arcapita Bank B.S.C.(c) (the "Bank") on behalf of itself, Arcapita Investment Holdings Limited ("AIHL") and certain other wholly-owned subsidiaries of the Bank (together with AIHL and Bank, the "Obligors") has presented to the Shari'ah Executive Committee the structure, mechanism and documentation relating to the Debtor-In-Possession and Exit Murabaha Facility for AIHL with Goldman Sachs International as investment agent (the "Facility"). After consultation with the Bank's management, we are of the opinion that it is permissible for the Obligors to enter into this Facility and that the transaction has been executed and documented in accordance with Islamic Shari'ah principles as they relate to the Obligors.

We have instructed the management of the Bank to ensure that all future operational and financial requirements and activities of the Facility comply with Islamic Shari'ah principles. We will monitor the activities from time to time to ensure conformity to such principles.

Sincerely,

Shari'ah Executive Committee

Shaikh Esam M. Ishaq