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Counsel for the Appellant Captain Hani Alsohaibi

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

-----X		
IN RE:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
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**APPELLANT’S STATEMENT OF ISSUES
AND DESIGNATION OF RECORD ON APPEAL FROM
ORDER APPROVING FINANCING FOR ARCAPITA BANK B.S.C.(c)
F/K/A FIRST ISLAMIC INVESTMENT BANK B.S.C.(c)
AND CERTAIN OF ITS FELLOW DEBTORS INCLUDING
CAYMAN-REGISTERED ARCAPITA INVESTMENT HOLDINGS LIMITED
ENTERED IN THE ABOVE-CAPTIONED CHAPTER 11 PROCEEDINGS
ON THE 26TH DAY OF JUNE, 2013**
*[Final 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 (I)
Authorizing Debtors (A) To Enter Into And Perform Under Murahaba Agreement,
And (B) To Obtain Credit On A Secured Superpriority Basis, And (II) Granting
Related Relief [Docket No. 1304]]*

Captain Hani Alsohaibi by and through his undersigned counsel, the Law Offices of Tally M. Wiener, Esq., respectfully appeals under 28 U.S.C. § 158(a) from the *Final 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 (I) Authorizing Debtors (A) To Enter Into And Perform Under Murahaba Agreement, And (B) To Obtain Credit On A Secured Superpriority Basis, And (II) Granting Related Relief [Docket No. 1304] entered in the above-captioned Chapter 11 proceedings on the 26th day of June, 2013. In accordance with the requirements of Federal Rule of Bankruptcy Procedure 8006, Appellant respectfully submits the following statement of issues to be presented, and designation of record items to be included, in the record on appeal in connection with the Notice of Appeal filed by the Appellant on the 1st day of July, 2013.

STATEMENT OF ISSUES ON APPEAL

1. Should the proposed financing have been approved on an interim basis in light of the debtors' failure to provide a copy of the proposed financing agreement and other statutorily mandated information concerning the proposed financing, prior to the objection deadline and in contravention of law including Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule for the Southern District of New York 4001-2?

2. Should the proposed financing have been approved on an interim basis in light of the debtors' lack of a showing of excusable neglect for failing to provide a copy of the proposed financing agreement and other statutorily mandated information concerning the proposed financing, prior to the objection deadline and in contravention of law including Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule for the Southern District of New York 4001-2?

3. Did the debtors improperly seek to obtain approval of the proposed financing on the 11th day of June, 2013 through an order confirming their chapter 11 plan, given that the hearing on final approval of the proposed financing had been adjourned from the 10th day of June, 2013 to the 24th day of June, 2013 due to the debtors' noncompliance with laws including Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule for the Southern District of New York 4001-2?

4. Did the debtors improperly seek approval of a revised credit agreement filed after the hearing held on the 10th day of June, 2013, in contravention of the interim approval order, the notice of hearing provided thereafter of the hearing on final approval of the proposed financing and laws including Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule for the Southern District of New York 4001-2?

5. Did the debtors improperly seek authorization to modify the terms of the proposed financing following entry of a final order and without court approval, which was likely to lead to further modifications at the expense of stakeholders?

6. Did the debtors improperly seek approval of a proposed financing with a UK choice of law clause to try to contract out of the regulatory restrictions imposed by Bahrain, which require Shari'ah compliance?

7. Did the debtors' pursuit of a proposed financing enabling a liquidating chapter 11 plan on a not fully consensual basis improperly frustrate the reasonable commercial expectations of stakeholders that financial arrangements made by First Islamic Investment Bank B.S.C.(c) n/k/a Arcapita Bank B.S.C.(c), a Bahrain Joint Stock Company, would be Shari'ah compliant as provided under Bahrain law?

8. Did the debtors improperly ask the bankruptcy court to infer Shari'ah compliance based on *fatwas* that are not reliable because they were not made by the debtors' Shari'ah supervisory board, and rather only by individual members?

9. Did the debtors improperly resist appointment of an independent Shari'ah supervisory board upon stakeholder request as the debtors' Shari'ah supervisory board had not been provided a meaningful opportunity to study the terms of the proposed financing?

10. Absent proceedings under Chapter 15 of the Bankruptcy Code, did the debtors improperly seek approval of a proposed financing in aid of insolvency proceedings pending in the Cayman Islands and made through their fellow debtor Arcapita Investment Holdings Limited, a Cayman-registered affiliate, which was the subject of insolvency proceedings in the Cayman Islands?

DESIGNATION OF RECORD ITEMS FOR APPEAL

07/1/2013	Docket No. 1314	Notice of Appeal from the Final 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 (I) Authorizing Debtors (A) To Enter Into And Perform Under Murahaba Agreement, And (B) To Obtain Credit On A Secured Superpriority Basis, And (II) Granting Related Relief
06/26/2013	Docket No. 1304	Final Order Signed On 6/26/2013, Authorizing Debtors (A) To Enter Into And Perform Under Murabaha Agreement, And (B) To Obtain Credit On A Secured Super-Priority Basis, And (II) Granting Related Relief

06/20/2013	Docket 1277	No.	Statement of Official Committee of Unsecured Creditors in support of Debtors' Motion Authorizing Replacement Financing and Joinder in their Reply to Objection to Same
06/20/2013	Docket 1275	No.	Reply to Motion/Reply in Support of Debtors' Motion Authorizing Replacement Postpetition Financing ¹
06/18/2013	Docket 1265	No.	Chapter 11 Plan/Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (With First Technical Modifications)
06/17/2013	Docket 1262	No.	Findings Of Fact, Conclusions Of Law, And Order Confirming The Second Amended Joint Plan Of Reorganization Of Arcapita Bank B.S.C.(c) and Related Debtors With Respect To Each Debtor Other Than Falcon Gas Storage Company, Inc. Under Charter 11 Of The Bankruptcy Code
6/17/2013	Docket 1261	No.	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 SHARIAH BOARD BE APPOINTED (Attachments: #1 Exhibit Fatwa)
06/14/2013	Docket 1259	No.	Statement - Notice of Filing of Final DIP Agreement
06/11/2013	Docket 1254	No.	Notice of Hearing/Notice of Final Hearing on Debtors' Motion for Entry of Final 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
06/10/2013	Docket 1245	No.	Interim Order Signed On 6/10/2013, Authorizing Debtors (A) To Enter Into And Perform Under Murabaha Agreement, And (B) To Obtain Credit On A Secured

¹ The transcript of the hearing held by the bankruptcy court on the 10th of June, 2013 was included by the debtors in their reply. The transcript of the hearing held by the bankruptcy court on the 24th day of June, 2013 is voluminous and, whilst in PDF format, not uploadable to PACER. It will be submitted in paper copy for inclusion in the record on appeal.

			Super Priority Basis, (II) Scheduling Final Hearing And (III) Granting Related Relief
06/09/2013	Docket 1234	No.	Statement Third Supplement to 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 Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing
06/07/2013	Docket 1227	No.	Objection to Motion 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 10, 2013 CONCERNING APPROVAL OF THE PROPOSED FINANCING BE ADJOURNED
06/06/2013	Docket 1224	No.	Statement Second Supplement to 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 Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing
06/06/2013	Docket 1216	No.	Statement/Supplement to 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 Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing
06/03/2013	Docket 1192	No.	Notice of Hearing Notice of Hearing for 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
05/27/2013	Docket 1157	No.	Motion to Approve - Debtor in Possession Financing 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
03/19/2012	Docket 6	No.	Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motion and in Accordance with Local Rule 1007-2

03/19/2012	Docket No. 1 (in case 12- 11077)	Voluntary Petition of Arcapita Investment Holdings Limited
03/19/2012	Docket No. 1	Voluntary Petition (Chapter 11). Order for Relief Entered -- Voluntary Petition of Arcapita Bank B.S.C.(c) Chapter 11 Plan due by 7/17/2012, Disclosure Statement due by 7/17/2012, Initial Case Conference due by 4/18/2012

Dated: New York, New York
July 14, 2013

Respectfully submitted on behalf of
Captain Hani Alsohaibi by:

/s/ Tally M. Wiener
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