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

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In re:	:	Chapter 11
	:	
	:	Case No. 12-11076 (SHL)
ARCAPITA BANK B.S.C.(C), <u>et al.</u> ,	:	
	:	(Jointly Administered)
	:	
Debtors.	:	
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**STIPULATION AND AGREED ORDER AMONG DEBTORS, OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, AND FRESHFIELDS BRUCKHAUS
DERINGER ON THE DEBTORS’ MOTION FOR AN ORDER CONFIRMING THE
DEBTORS’ AUTHORITY TO FUND NON-DEBTOR EUROLOG AFFILIATES**

Arcapita Bank B.S.C.(c) (“Arcapita”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) ¹ in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”), and Freshfields Bruckhaus Deringer LLP (“Freshfields”) by and through

¹ The Debtors in these chapter 11 cases are: Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited, and Falcon Gas Storage Company, Inc.

their respective counsel, hereby enter into this stipulation and agreed order (the “Stipulation and Order”) and stipulate and agree as follows:²

RECITALS

WHEREAS, on April 30, 2012, Arcapita Limited (“Limited”), Arcapita Industrial Management S.A.R.L. (“AIMS”), and Point Park Properties S.R.O (“P3” and together with Limited and AIMS, the “EuroLog Affiliates”) retained certain underwriters of the Eurolog IPO (as defined herein) pursuant to an engagement letter (as amended on October 8, 2012, the “Engagement Letter”), which provided, in relevant part, for the payment by the EuroLog Affiliates of Freshfields’ invoices for legal fees and expenses incurred in connection with the Eurolog IPO;

WHEREAS, on March 15, 2012, the Debtors transferred to Freshfields cash in an aggregate amount of \$6,707.78 (the “Prepetition Transfer”).

WHEREAS, on September 10, 2012, the Court approved the Debtors’ motion pursuant to sections 105(a) and 363(b) of the Bankruptcy Code seeking authority to execute documentation in connection with, and to launch, an initial public offering (Docket No. 465; the “EuroLog IPO”) of shares indirectly held by the Debtors through non-Debtor affiliates including, among others, the EuroLog Affiliates;

WHEREAS, on October 31, 2012, the Debtors advised the Court that the EuroLog IPO would not be launched;

WHEREAS, on February 27, 2013, the Debtors filed the *Debtors’ Motion For Order Confirming The Debtors’ Authority To Fund Non-Debtor Eurolog Affiliates* (Docket No. 872; the “Fee Motion”) seeking an order confirming their authority to lend certain amounts to the EuroLog Affiliates pursuant to section 363(c) of the Bankruptcy Code to satisfy, *inter alia*, the

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Fee Motion.

invoices rendered by Freshfields for fees incurred in connection with the EuroLog IPO in the aggregate amount of £725,000 plus VAT and expenses (the “Freshfields Invoices”);

WHEREAS, on March 8, 2013, the Committee interposed an objection to the Fee Motion [Docket No. 839] asserting, among other things, that the Debtors are not liable for the Freshfields Invoices, payment is prohibited under section 503(c)(3) of the Bankruptcy Code, and the Debtors lacked authority to advance funds to satisfy the Freshfields Invoices (the “Committee Objection”); and on March 13, 2013, the Debtors filed their reply to the Committee Objection and in support of the Fee Motion [Docket No. 914];

WHEREAS, on June 17, 2013, the Court entered an order confirming the *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)* (Docket No. 1262; the “Plan”);

WHEREAS, the Committee, the Debtors, Freshfields and the EuroLog Affiliates agree and acknowledge that it is in the best interests of the Debtors, their estates and their creditors to settle all issues related to the payment of the Freshfields Invoices without further litigation;

WHEREAS, the Committee and the Debtors agree and stipulate that resolution of the Committee Objection in accordance with the terms of the Stipulation and Order is a sound exercise of the Debtors’ business judgment; and

WHEREAS, certain of the EuroLog Affiliates and the Debtors have agreed to seek a separate agreement (the “Reimbursement Agreement”) pursuant to which those EuroLog Affiliates will reimburse the Debtors for their payment of the Settlement Amount (as defined herein), the precise terms of which are under discussion.

AGREED ORDER

IT IS THEREFORE AGREED AND, UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. The Debtors are authorized and directed to pay £750,231.12 (the “Settlement Amount”) to Freshfields on the Effective Date of the Plan, representing a 15% reduction in fees from that requested in the Fee Motion. The Settlement Amount shall be an Allowed Administrative Expense Claim (as defined in the Plan) upon entry of this Stipulation and Order.
2. The Debtors and the Committee agree to release and waive any claim against Freshfields on account of the Prepetition Transfer.
3. Freshfields agrees to waive any claim against the Debtors and each of the EuroLog Affiliates for fees and expenses incurred by Freshfields due and owing under the Engagement Letter through the date hereof, even if such amounts exceed the amounts set forth in the Freshfields Invoices.
4. Freshfields will not seek payment from any of the Debtors or their successors, including the Reorganized Debtors (as defined in the Plan), on account of fees or expenses incurred after the date hereof for any services rendered by Freshfields that relate to (i) the Engagement Letter, or (ii) any transactions involving the EuroLog IPO or the EuroLog Assets (the “Future Fees”).
5. Within ten (10) business days following entry of the Stipulation and Order, the Debtors will use their best efforts to enter into the Reimbursement Agreement, which shall be in form and substance acceptable to the Committee, which shall obligate certain owners of the EuroLog Assets (as defined in the Fee Motion) to reimburse the Settlement Amount to the Debtors; provided, however, that the Debtors’ obligation to pay the Settlement Amount to

Freshfields as an Allowed Administrative Expense Claim shall be absolute and not conditioned upon the Reimbursement Agreement in any way.

6. Upon receipt of the Settlement Amount, Freshfields agrees to assign to the Debtors, without recourse, any claim it may have under the Engagement Letter against any of the EuroLog Affiliates, except with respect to the Future Fees.

7. The Committee Objection shall be deemed withdrawn, with prejudice, solely with respect to Freshfields.

8. Nothing in the Stipulation and Order shall be construed as an assumption or rejection by the Debtors of the Engagement Letter pursuant to section 365 of the Bankruptcy Code.

9. Except as provided in paragraph 2 of the Stipulation and Order, nothing contained herein shall be deemed to constitute a waiver, relinquishment of or otherwise affect any pre-petition or post-petition rights, claims, interests, obligations, benefits, or remedies that the Debtors, the Committee, or any party-in-interest may have or choose to assert on behalf of the Debtors' estates under any provision of the Bankruptcy Code or applicable law, including against each other or third parties, with respect to the Eurolog IPO and the Fee Motion, including, but not limited to, the Committee Objection to the fees of KPMG LLP (UK), KPMG Audit Plc, and Linklaters LLP that are the subject of the Fee Motion.

10. Nothing in the Stipulation and Order shall be deemed to be a settlement of the Fee Motion or the Committee Objection as each relates to KPMG LLP (UK), KPMG Audit Plc, and Linklaters LLP.

11. The relief granted herein shall be binding upon the Debtors, the Committee, Freshfields, and the Reorganized Debtors (as defined in the Plan).

12. The terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry by the Court.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Stipulation and Order.

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Dated: July 23, 2013
New York, New York

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