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

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

**STIPULATED ORDER ALLOWING CLAIMS
FILED BY PORTIGON AG, LONDON BRANCH, IN ITS CAPACITY
AS THE INVESTMENT AGENT UNDER THE SYNDICATED FACILITY**

This Stipulated Order (this “*Stipulated Order*”) is entered into as of August 28, 2013 by and among Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and Arcapita Investment Holdings Limited (“*AIHL*” and, collectively with Arcapita Bank and the other debtors in the above captioned chapter 11 cases, the “*Debtors*”), on the one hand; and Portigon AG, London Branch, in its capacity as successor investment agent (in such capacity, the “*Investment Agent*”) under the Murabaha Agreement (as defined below), on the other hand. The Investment Agent, Arcapita Bank, and AIHL are collectively referred to herein as the “*Parties*”.

RECITALS

WHEREAS, on July 11, 2012, the Bankruptcy Court for the Southern District of New York (the “*Court*”) entered an order (Dkt. No. 308) in the above captioned chapter 11 cases

(the “*Chapter 11 Cases*”) establishing August 30, 2012 at 5:00 p.m. (prevailing U.S. Eastern Time) as the deadline (the “*Bar Date*”) for non-governmental persons or entities to file proofs of claim in the Chapter 11 Cases;

WHEREAS, the Investment Agent timely filed the proofs of claim identified on Schedule A against the Debtors (the “*Filed Claims*”) based on obligations owed by Arcapita Bank and AIHL under a financing facility (the “*Syndicated Facility*”) established pursuant to a Master Murabaha Agreement, dated March 28, 2007 (as amended and restated on April 11, 2007, the “*Murabaha Agreement*”) between Arcapita Bank and WestLB AG, London Branch, in its capacity as investment agent (the “*Previous Investment Agent*”) and the related Guarantee, dated March 28, 2007 and executed by AIHL in favor of the Previous Investment Agent and arrangers under the Murabaha Agreement;

WHEREAS, the Filed Claims assert that Arcapita Bank, as the primary obligor under the Syndicated Facility, and AIHL, as guarantor under the Syndicated Facility, are indebted to the Syndicated Facility participants in the following amounts: (a) \$1.1 billion in aggregate outstanding principal; (b) accrued profit in the amount of \$2,204,552.75; (c) “fees, costs and expenses . . . in an as yet undetermined amount” as well as “all other obligations . . . in an as yet undetermined and unliquidated amount”; and (d) “contingent and/or unliquidated postpetition claims” ((c) and (d) together, the “*Unliquidated Claims*”);

WHEREAS, the Filed Claims superseded two scheduled claims in favor of the Investment Agent against Arcapita Bank and AIHL, each in the amount of \$1,102,204,552.75;

WHEREAS, on April 26, 2013, the Debtors filed five omnibus objections to claims (Dkt. Nos. 1049-1053) (the “*Omnibus Objections*”);

WHEREAS, on April 26, 2013, this Court entered an order (Dkt. No. 1045) preserving the Debtors' right to object to any claim or interest asserted in the Chapter 11 Cases, including the Filed Claims and any other claim not disputed via the Omnibus Objections (the "***Disclosure Statement Order***");

WHEREAS, on June 17, 2013, this Court entered an order (Dkt. No. 1262) confirming the Debtors' *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)* (Dkt. No. 1265) (as may be amended, modified or supplemented, the "***Plan***");

WHEREAS, Parties do not dispute that Arcapita Bank and AIHL, as primary obligor and guarantor respectively, are indebted in the amount of \$1,102,204,552.75 under the Syndicated Facility, but do dispute whether either Arcapita Bank or AIHL is indebted under the Syndicated Facility for all or any portion of the as-yet unspecified Unliquidated Claims; and

WHEREAS, rather than delay the treatment of the undisputed portion of the Filed Claims pending adjudication of Arcapita Bank or AIHL's obligations to the Investment Agent with respect to the Unliquidated Claims, after good-faith negotiations, the Parties have reached an agreement as to the treatment of the Filed Claims on the terms set forth below;

NOW, THEREFORE, in consideration of the foregoing, it is hereby stipulated and agreed that:

TERMS

1. **Stipulated Order.** This Stipulated Order shall become effective upon the Court's entry of an order approving it, which may include the Court's "SO ORDERED" execution of this Stipulated Order (the date of such order, the "***Order Entry Date***").

2. Allowed Claims. Upon the Order Entry Date, (a) the Filed Claim against Arcapita Bank, Claim No. 329, shall be allowed under section 502(a) of title 11 of the United States Code in the amount of \$1,102,204,552.75 as a general unsecured claim against Arcapita Bank in Class 4(a) under the Plan (including for purposes of distribution on the Plan), as set forth in Schedule B hereto, and (b) the Filed Claim against AIHL, Claim No. 331, shall be allowed under section 502(a) of title 11 of the United States Code in the amount of \$1,102,204,552.75 as a general unsecured claim against AIHL in Class 4(b) under the Plan (including for purposes of distribution on the Plan), as set forth in Schedule B hereto, (Claim Nos. 329 and 331 as amended pursuant to this paragraph as to Arcapita Bank and AIHL shall together be referred to as the “*Allowed Portigon Claims*”). The Unliquidated Claims shall be addressed as set forth in paragraphs 3 and 4 below. Notwithstanding anything to the contrary herein, the Disbursing Agent (as such term is defined in the Plan) shall distribute any and all amounts on account of the Allowed Portigon Claims directly to record holders of Syndicated Facility participations as of the Confirmation Date (as such term is defined in the Plan), as indicated by Portigon, in accordance with the terms of the Plan.

3. Unliquidated Claims. No later than thirty days after the Order Entry Date, the Investment Agent may file a supplement to the Filed Claims (the “*Claims Supplement*”) for the sole purpose of identification and liquidation, by actual dollar amount, of the Unliquidated Claims against Arcapita Bank and AIHL. If no Claims Supplement is timely filed, the portion of the Filed Claims that refers to the Unliquidated Claims shall be disallowed in full for all purposes. If the Claims Supplement is filed, such Claims Supplement shall replace and supersede the portion of the Filed Claims that asserts the Unliquidated Claims; the Claims Supplement shall contain such supporting documentation as is necessary to evidence the asserted

claims and shall not request allowance of any claims that are unliquidated as to amount. The liquidated claims reflected in the Claims Supplement shall hereinafter be referred to as the “*New Claims*”). The New Claims shall be asserted in Classes 4(a) and 4(b) under the Plan, respectively. The Debtors shall direct GCG, Inc., the Debtors’ claims agent, to assign claim numbers to the New Claims and to add the New Claims to the claims register maintained in the Chapter 11 Cases in favor of the Investment Agent. The Debtors (and any successors to the Debtors) reserve all rights to object to the New Claims on any grounds, and any party in interest may object to the New Claims to the extent permitted under the Plan or applicable law, *except* that neither the Debtors nor any party in interest may object to the New Claims on the grounds that the Claim Supplement is being filed after the Bar Date. Nothing in this Stipulation provides for the allowance of any part of the New Claims as an Allowed Administrative Expense Claim (as such term is defined in the Plan), and the Investment Agent shall not be entitled to an Allowed Administrative Expense Claim unless the Investment Agent first obtains a further order of the Court obtained in accordance with Section 2.1 of the Plan.

4. New Claim Maximum Amount. Except as provided below, \$5,000,000 shall be established as the maximum amount of the Unliquidated Claims and any New Claims for reserve purposes under Article VII of the Plan, and the maximum amount at which such Unliquidated Claims and New Claims may be allowed for distribution purposes under the Plan (the “**Reserve Amount**”). Notwithstanding the foregoing, if a Claims Supplement is filed, the Reserve Amount shall be reduced to the lesser of \$5,000,000 and the amounts asserted by the Claims Supplement; in no event shall the Reserve Amount exceed \$5,000,000. If the Investment Agent fails to file a Claims Supplement no later than 30 days after the Order Entry Date, Reserve Amount shall be reduced to zero and Unliquidated Claims shall be disallowed in full with

prejudice.

5. No Further Amendments of Allowed Portigon Claims. Upon the Order Entry Date, this Stipulated Order shall preclude the Investment Agent from amending the Allowed Portigon Claims; *provided* that, subject to paragraph 4 above, nothing in this Stipulated Order shall preclude the Investment Agent from filing the Claims Supplement.

6. Authority. The Investment Agent expressly represents and warrants that it has full capacity and authority to enter into this Stipulated Order and perform hereunder.

7. Representations and Warranties. Except as set forth herein with respect to the New Claims, the Parties intend this Stipulated Order to be a final and complete resolution of the Allowed Portigon Claims and to conclusively determine the allowed amount of the Allowed Portigon Claims. The Parties agree that this Stipulated Order was negotiated in good faith, and that the Parties had the opportunity, if they so chose, to consult with legal counsel. Each of the Parties represents and warrants that (a) such Party is not relying on any statements, understandings, representations, expectations, or agreements other than those expressly set forth herein; (b) to the extent such Party elected to retain legal counsel, such Party has been represented and was advised by legal counsel in connection with this Stipulated Order, which such Party enters into voluntarily, of its own choice and not under coercion or duress; (c) such Party has made its own investigation of the facts and is relying upon its own knowledge and the advice of counsel; and (d) such Party knowingly waives any and all claims that this Stipulated Order was induced by any misrepresentation or nondisclosure and knowingly waives any and all rights to rescind or avoid this Stipulated Order based upon presently existing facts, known or unknown. These representations and warranties shall survive the execution of this Stipulated Order.

8. Successors, Assigns, and Third Party Beneficiaries. This Stipulated Order shall be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties.

9. Entire Agreement. This Stipulated Order contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto. There are no representations, agreements, or inducements, except as set forth expressly and specifically in this Stipulated Order.

10. Amendments in Writing. This Stipulated Order may not be amended or modified other than by signed writing executed by the Parties hereto approved by an order of the Court.

Dated: August 29, 2013
New York, New York

Dated: August 29, 2013

/s/ Michael A. Rosenthal
Name: Michael A. Rosenthal

/s/ T. Sai Louie
Name: T. Sai Louie
Title: Authorised Signatory

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/s/ A.G. Grimmond
Name: A.G. Grimmond
Title: Executive Director

ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

PORTIGON AG, LONDON BRANCH
in its capacity as the Investment Agent

SO ORDERED,

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

Dated: September 11, 2013

Schedule A

Filed Claims

| <u>FILED CLAIM NO.</u> | <u>APPLICABLE DEBTOR</u> | <u>FILED BY</u> |
|-------------------------------|--------------------------------------|----------------------------|
| 329 | Arcapita Bank B.S.C. | Portigon AG, London Branch |
| 331 | Arcapita Investment Holdings Limited | Portigon AG, London Branch |

Schedule B

Allowed Claims

| <u>CLAIM NO.</u> | <u>APPLICABLE DEBTOR</u> | <u>NAMED CLAIMANT</u> | <u>CLASS</u> | <u>AMOUNT</u> |
|-------------------------|---|-------------------------------|---------------------|----------------------|
| 329 | Arcapita Bank B.S.C. | Portigon AG, London Branch | 4(a) | \$1,102,204,552.75 |
| 331 | Arcapita Investment Holdings Limited | Portigon AG, London Branch | 4(b) | \$1,102,204,552.75 |