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*Counsel for the Reorganized Debtors and
the New Holding Companies*

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

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	:	
In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
	:	
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**NOTICE OF HEARING ON MOTION TO ESTIMATE UNLIQUIDATED CLAIMS FOR
PURPOSES OF ESTABLISHING RESERVE IN CONNECTION WITH
DISTRIBUTIONS UNDER CHAPTER 11 PLAN**

PLEASE TAKE NOTICE that on November 1, 2013, the above-captioned Reorganized Debtors (the “Reorganized Debtors”) filed the annexed *Motion to Estimate Unliquidated Claims for Purposes of Establishing Reserve in Connection with Distributions Under Chapter 11 Plan* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green,

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.) is being administered jointly with the other above-captioned cases, but no plan has been confirmed in such case.

New York, New York 10004-1408 on **November 21, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)** or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (each, an “Objection”) shall be filed with the Court on the docket of *In re Arcapita Bank B.S.C.(c), et al.*, Case No. 12-11076 (SHL), either by (a) electronic filing pursuant to the Case Management Procedures approved by the Court [Docket No. 21] and the Court’s General Order M-399 (available at www.nysb.uscourts.gov/court-info/local-rules-and-orders/general-orders), by registered users of the Court’s case filing system and by all other parties in interest on a compact disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, or (b) delivering the original Objection to the Court at One Bowling Green, Room 701, New York, New York 10004-1408, and served in accordance with General Order M-399 on (i) the Chambers of the Honorable Sean H. Lane, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004; (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (iii) counsel for the Reorganized Debtors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.); and (iv) all parties listed on the Master Service List established in the chapter 11 cases, so as to be received no later than **November 14, 2013 at 12:00 p.m. (prevailing U.S. Eastern Time) (the “Objection Deadline”)**.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the hearing and failure to appear may result in relief being granted or denied with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that if no Objection is timely filed and served with respect to any claim dealt with in the Motion, the Reorganized Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form of Exhibit A annexed to the Motion, which may be entered with no further notice or opportunity to be heard.

Dated: November 1, 2013
New York, New York

MILBANK, TWEED, HADLEY & M^CCLOY LLP

By: /s/ Evan R. Fleck
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Evan R. Fleck
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
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ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
	:	
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**MOTION TO ESTIMATE UNLIQUIDATED CLAIMS FOR PURPOSES OF
ESTABLISHING RESERVE IN CONNECTION WITH
DISTRIBUTIONS UNDER CHAPTER 11 PLAN**

The above-captioned Reorganized Debtors hereby submit this motion (the “Motion”), pursuant to section 502(c) of the Bankruptcy Code and Section 8.10 of the *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)* [Docket No. 1265] (the “Plan”), for an order, in the form attached hereto as Exhibit A, estimating the amount for establishing an adequate reserve (the “Reserve”) for unliquidated claims filed against their predecessors in interest (the “Debtors”) in connection with distributions to be made under the Plan. This Motion is supported by the *Declaration of Scott A. Rinaldi in Support of Motion to*

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.) is being administered jointly with the other above-captioned cases, but no plan has been confirmed in that case.

Estimate Unliquidated Claims for Purposes of Establishing Reserve in Connection with Distributions Under Chapter 11 Plan attached hereto as Exhibit B (the “Rinaldi Declaration”).

In support of the Motion, the Reorganized Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 17, 2013, the Court confirmed the Plan, and the Plan became effective on September 17, 2013 (the “Effective Date”). The Plan provides that distributions on the Allowed Claims in Classes 4a, 4b, 5a, 5b and 8a (the “Applicable Classes”) must be made on the Effective Date “or as soon thereafter as reasonably practicable.” Plan § 8.3.² To comply with this provision of the Plan, the Reorganized Debtors wish to make initial distributions on the Allowed Claims in the Applicable Classes before the end of November (the “Target Distribution Date”).

3. However, out of approximately 300 proofs of claim filed against the Debtors that fall within the Applicable Classes, twenty-eight proofs of claims contain, in addition to a liquidated amount, statements that the claimant asserts, or reserves the right to assert, further contingent and/or unliquidated amounts (the “Partially Unliquidated Claims”). The Partially Unliquidated Claims are listed on Exhibits C and D attached hereto. In addition, seven proofs of claim have been filed in wholly unliquidated amounts (the “Wholly Unliquidated Claims”) and, together with the Partially Unliquidated Claims, the “Unliquidated Claims”). The Wholly Unliquidated Claims are listed on Exhibit E attached hereto.

² All capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Plan.

4. Without having liquidated all of the Unliquidated Claims, the Reorganized Debtors will not be in the position to make the distributions to the holders of Allowed Claims in the Applicable Classes on the Target Distribution Date unless they are in the position to establish, by such date, the Reserve to hold the distributions that may be ultimately payable on account of the Unliquidated Claims. It is not practicable to expect that the Reorganized Debtors may either litigate or settle all thirty-five Unliquidated Claims before the Target Distribution Date, but, fortunately, the Bankruptcy Code provides a solution for this problem.

5. Specifically, section 502(c)(1) of the Bankruptcy Code provides that “[t]here shall be estimated for purpose of allowance . . . any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case” 11 U.S.C. § 502(c)(1). Indeed, in anticipation of this problem, section 8.10 of the Plan allows the Reorganized Debtors to “seek estimation under section 502 of the Bankruptcy Code with respect to any Proof of Claim or Proof of Interest.” Plan § 8.10.

RELIEF REQUESTED

6. Based on the foregoing, the Reorganized Debtors request that the Court, pursuant to section 502(c) of the Bankruptcy Code and section 8.10 of the Plan, estimate the Unliquidated Claims for the purposes of establishing the Reserve in the amount of \$467,508,407.57, to enable the Reorganized Debtors to make distributions under the Plan to the holders of Allowed Claims in the Applicable Classes by the Target Distribution Date.

BASIS FOR RELIEF REQUESTED

7. The goal of section 502(c) is to promote the fundamental policy of chapter 11, namely, that a chapter 11 reorganization “must be accomplished quickly and efficiently.” Bittner v. Borne Chemical Co., 691 F.2d 134, 135-37 (3rd Cir. 1982). Estimation of a claim under section 502(c) is appropriate if liquidation of a claim “will take too long and unduly delay the

administration of the estate's assets." In re New York Medical Group, P.C., 265 B.R. 408, 415 (Bankr. S.D.N.Y. 2001). See also In re Continental Airlines, 981 F.2d 1450, 1461 (5th Cir. 1993) ("Bankruptcy Code § 502(c)(1) serves two purposes: 1) . . . to avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of these actions, and 2) . . . to promote a fair distribution to creditors through a realistic assessment of uncertain claims."). "The estimation process is an expedient method for setting the amount of a claim that may receive a distributive share from the estate." In re Thomson McKinnon Sec., Inc., 143 B.R. 612, 619 (Bankr. S.D.N.Y. 1992).

8. Thus, even though section 502(c) refers to the estimation of claims for purposes of allowance, courts have routinely used estimation to set reserves for the purpose of allowing timely distributions under a chapter 11 plan. See, e.g., In re Adelpia Commc'ns Corp., 368 B.R. 140, 279 (Bankr. S.D.N.Y. 2007) (estimating claim for purposes of establishing reserve); In re Enron Corp., No. 01-16034 (AJG), 2006 WL 544463, at *8 (Bankr. S.D.N.Y. Jan. 17, 2006) (same). Moreover, estimation is mandatory rather than permissive wherever "adjudication of the claim would unduly delay the administration of the bankruptcy case." In re Club Ventures Inv. LLC, No. 11-10891, 2012 WL 6139082, at 4* (Bankr. S.D.N.Y. 2012). See also Thomson McKinnon Sec., Inc., 143 B.R. at 619 (same).

9. Because neither the Bankruptcy Code nor the Bankruptcy Rules provide any guidance to the court as to the estimation procedures, the court has wide discretion in determining which method to use that best suits the circumstances. See In re Chemtura Corp., 448 B.R. 635, 649 (Bankr. S.D.N.Y. 2011). See also, Adelpia Commc'ns Corp., 368 B.R. at 278 ("[W]hen estimating claims, bankruptcy courts may use whatever method is best suited to

the contingencies of the case”); In re Ralph Lauren Womenswear, Inc., 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996) (stating that estimation is “committed to the reasonable discretion of the court, which should employ whatever method is best suited to the circumstances of the case.”)

10. The Reorganized Debtors submit that estimation of the Unliquidated Claims under section 502(c)(1) for the purposes of establishing the Reserve is necessary to avoid undue prejudice to the holders of Allowed Claims who would not be able to receive the distributions they are entitled to on the Target Distribution Date. The Reorganized Debtors suggest that (i) each Partially Unliquidated Claim listed on Exhibit C be estimated for the purpose of the Reserve at the liquidated amount set forth in such claim, (ii) each Partially Unliquidated Claim listed on Exhibit D be estimated for the purpose of the Reserve at the amount set forth for such claim in Exhibit D, and (iii) the aggregate of the Wholly Unliquidated Claims be estimated for the purpose of the Reserve at \$0.

11. None of the claimants that have filed the Partially Unliquidated Claims listed on Exhibit C has chosen to supplement or amend its proof of claim in the fourteen months that passed since the bar date in these cases to liquidate its claim. There is no indication in either the Debtors’ books and records or in the supporting documentation submitted with these Partially Unliquidated Claims that any “further contingent or unliquidated amounts” are due to the claimants who filed these Partially Unliquidated Claims. See Rinaldi Declaration ¶ 7. Accordingly, the Reorganized Debtors submit that estimating each of the Partially Unliquidated Claims listed on Exhibit C in the liquidated amount set forth in each such Claim is appropriate. See Rinaldi Declaration ¶ 8. However, to provide for the possibility that any of these claims is ultimately allowed in an amount in excess of that set forth in Exhibit C, for the purposes of funding the Reserve, the Reorganized Debtors propose to add a 10% cushion to the

aggregate estimated amount of claims listed in Exhibit C. The Reorganized Debtors believe that such cushion is adequate to provide for the eventuality discussed in the preceding sentence. See Rinaldi Declaration ¶ 8.

12. As to the Partially Unliquidated Claims set forth in Exhibit D, these claims are substantively duplicative of (i) claim nos. 329 and 331 filed by Portigon AG, London Branch, in its capacity as agent under a Master Murabaha Agreement with Arcapita Bank B.S.C.(c) (the “Agent Claims”), and (ii) a claim scheduled by the Debtors. For this reason, each of the claims listed on Exhibit D is subject to a pending omnibus objection (the “Seventh Omnibus Objection”). Although the Seventh Omnibus Objection is scheduled to be heard on November 21, 2013, *i.e.*, the same date as this Motion, as of the date of the filing of the Motion, the objection deadline for the Seventh Omnibus Objection has not yet passed. Accordingly, except as set forth in the next paragraph, to the extent that, as a result of a timely response filed with respect to any of the claims listed on Exhibit D, any such claim does not get expunged on or about November 21, pending such expungement, the Reorganized Debtors seek estimation of each such claim at \$0 for the reasons set forth in the Seventh Omnibus Objection.

13. In response to the Seventh Omnibus Objection, one of the claimants, Fortis Bank SA/NV, has contacted the Reorganized Debtors and pointed out that the portions of its two proofs of claim on account of its legal fees are not, in fact, duplicative of the Agent Claims. Accordingly, the Reorganized Debtors (i) intend to remove claim nos. 97 and 98 from the proposed Order for the Seventh Omnibus Objection, and (ii) for the purposes of the Reserve, seek to have each of these two claims estimated at the amount of legal fees asserted therein.

14. As to the Wholly Unliquidated Claims, the Reorganized Debtors’ advisors have carefully analyzed each of these claims to arrive at the appropriate estimation amount for such

claims. Based on such analysis, the Reorganized Debtors believe that each of the Wholly Unliquidated Claims should be estimated at \$0 for the purposes of establishing the Reserve.

15. Claim no. 58 asserts a claim on account of a guarantee of contingent obligations under a purchase agreement entered into in April 2010 relating to purchase price, tax liabilities, and indemnification obligations. Since more than three and a half years has passed since the purchase agreement was executed, and the claimant has not yet discovered any basis on which to assert a claim, it is appropriate to estimate claim no. 58 at \$0.

16. Claim nos. 79 and 80 appear to have been filed by a former employee of Arcapita Inc. with no indication as to any grounds on which any of the Debtors may be liable to the claimant. The Reorganized Debtors are not aware of any liabilities to this employee other than those on account of which he already has allowed claims (claim nos. 77 and 78). See Rinaldi Declaration ¶ 13.

17. Claim nos. 65 and 66 assert contingent unliquidated claims under a guarantee arising under a credit facility provided by the claimant, HSH Nordbank, and other lenders to one of the Debtors' portfolio companies (the "Nordbank Facility"). To the Reorganized Debtors best knowledge, the only default under the Nordbank Facility was the guarantor's bankruptcy filing, and the portfolio company at issue remains in compliance with its obligations thereunder. In addition, the portfolio company's obligations under the Nordbank Facility are secured by its assets, the value of which the Reorganized Debtors believe exceeds the total amount of obligations outstanding under the Nordbank Facility. Based on the foregoing, the Reorganized Debtors believe that it is appropriate to estimate claim nos. 65 and 66 at \$0 for purposes of establishing the Reserve. See Rinaldi Declaration ¶ 14.

18. Finally, claim nos. 348 and 349 appear to have been filed solely, as they state, to “preserve any and all rights” that the claimant “may have” in connection with a transaction that closed a long time ago and with respect to which the Reorganized Debtors are not aware of any continuing liability. See Rinaldi Declaration ¶ 15.

RESERVATION OF RIGHTS

19. The Reorganized Debtors reserve their right to object to each of the Unliquidated Claims on any and all additional factual or legal grounds.

NOTICE

20. The Reorganized Debtors have provided notice of the filing of this Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); and (ii) each claimant listed on Exhibits C, D, and E. The Reorganized Debtors submit that such notice is sufficient and no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Reorganized Debtors request that the Court (i) estimate the amount of the Reserve on account of the Unliquidated Claims at \$467,508,407.57, and (ii) granted the Reorganized Debtors such other and further relief as the Court may deem just and proper.

Dated: November 1, 2013
New York, New York

MILBANK, TWEED, HADLEY & M^cCLOY LLP

/s/ Evan R. Fleck _____

Dennis F. Dunne

Evan R. Fleck

Lena Mandel

One Chase Manhattan Plaza

New York, NY 10005-1413

Telephone: (212) 530-5000

*Counsel for the Reorganized Debtors and
the New Holding Companies*

Exhibit A

Proposed Order

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

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In re: : Chapter 11
: :
ARCAPITA BANK B.S.C.(c), et al., : Case No. 12-11076 (SHL)
: :
Reorganized Debtors.¹ : Confirmed
: :
----- X

**ORDER GRANTING MOTION TO ESTIMATE UNLIQUIDATED CLAIMS
FOR PURPOSES OF ESTABLISHING RESERVE IN CONNECTION WITH
DISTRIBUTIONS UNDER CHAPTER 11 PLAN**

Upon consideration of (i) the above-captioned Reorganized Debtors’ motion (the “Motion”)² seeking entry of an order, pursuant to section 502(c) of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and section 8.10 of the Plan, estimating the amount of certain unliquidated claims and establishing a reserve on account of such claims for purposes of making distributions under the Plan, (ii) the Rinaldi Declaration in support of the Motion, (iii) the objections, if any, interposed to the relief requested in the Motion, and (iv) statements of counsel at the hearing on the Motion; and the Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion and the hearing thereon was appropriate under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and the Rinaldi Declaration establish just cause for the relief granted herein; and the

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

Court having found that the relief requested in the Motion is in the best interests of the Reorganized Debtors and other parties in interest; and upon the record of the hearing, the chapter 11 cases and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

1. **ORDERED** that the relief requested in the Motion is granted to the extent provided herein.

2. **ORDERED** that pursuant to section 502(c) of the Bankruptcy Code and section 8.10 of the Plan, for the purposes of establishing the Reserve necessary to commence distributions to the Applicable Classes under the Plan, each of the claims identified on Exhibit 1 attached hereto (the “Unliquidated Claims”) is hereby estimated in the amount set forth on Exhibit 1.

3. **ORDERED** that the Reserve with respect to the Applicable Classes shall be established in the amount of \$467,508,407.57.

4. **ORDERED** that estimation of the Unliquidated Claims is not deemed to establish the maximum allowed amount of any Unliquidated Claim for any purpose other than the establishing of the Reserve.

5. **ORDERED** that the Unliquidated Claims shall remain on the claims register subject to the Reorganized Debtors’ right to further object to any or all of them on any basis, and that such right is expressly preserved.

6. **ORDERED** that, except as set forth in this Order, nothing in this Order constitutes an admission or finding with respect to any Unliquidated Claim.

7. **ORDERED** that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2013

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Unliquidated Claims

ARCAPITA BANK B.S.C.(C), ET AL.

EXHIBIT 1

UNLIQUIDATED CLAIMS

CLAIM NO.	NAME OF CLAIMANT	DEBTOR & CASE NO.	ESTIMATED RESERVE AMOUNT
36	Goldman Sachs Lending Partners LLC	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
37	Goldman Sachs Lending Partners LLC	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
58	Esselte Corporation	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
65	HSH Nordbank AG New York Branch	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
66	HSH Nordbank AG Cayman Islands Branch	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
79	Employee 1004 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
80	Employee 1004 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
81	ZCOF Chicago Hotel LLC	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$4,047,642.33
86	Investor 51372 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
88	Investor 50344 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$1,743,305.46
92	Investor 50788 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$10,626,925.83
97	Fortis Bank SA/NV	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$12,000.00
98	Fortis Bank SA/NV	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$12,000.00
109	Barclays Bank Plc	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
110	Barclays Bank Plc	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
124	Investor 52022 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$521,270.62
138	Investor 50777 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$31,874.04
163	AKA Ausfuhrkredit-Gesellschaft MBH	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00

ARCAPITA BANK B.S.C.(C), ET AL.

EXHIBIT 1

UNLIQUIDATED CLAIMS

CLAIM NO.	NAME OF CLAIMANT	DEBTOR & CASE NO.	ESTIMATED RESERVE AMOUNT
164	AKA Ausfuhrkredit-Gesellschaft MBH	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
276	Archview Fund LP	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
277	Archview Fund LP	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
278	Archview Master Fund Ltd	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
279	Archview Master Fund Ltd	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
283	Archview Fund LP	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
284	Archview Fund LP	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
305	Employee 1001 [Address on File]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$3,998,965.02
348	Jill Superco LLC	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
349	Jill Superco LLC	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
383	GP Zachariades Overseas Ltd.	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$20,748,703.18
424	Midtown Acquisitions LP	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$0.00
425	Midtown Acquisitions LP	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$0.00
481	Arcsukuk (2011-1) Limited	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$100,263,769.29
504	Commerzbank AG	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$165,525,000.00
505	Commerzbank AG	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$17,214,600.00
519	Arcsukuk (2011-1) Limited	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$100,263,769.29

Exhibit B

Rinaldi Declaration

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

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	:	
In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
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**DECLARATION OF SCOTT A. RINALDI IN SUPPORT OF
MOTION TO ESTIMATE UNLIQUIDATED CLAIMS FOR PURPOSES OF
ESTABLISHING RESERVE IN CONNECTION WITH
DISTRIBUTIONS UNDER CHAPTER 11 PLAN**

Pursuant to 28 U.S.C. § 1746, I, Scott A. Rinaldi, hereby declare:

1. I am a Managing Director at FTI Consulting, Inc. (“FTI”), the financial advisor for the above-captioned Reorganized Debtors.

2. In my capacity as Managing Director of FTI, I am authorized to submit this Declaration in support of the *Motion to Estimate Unliquidated Claims for Purposes of Establishing Reserve in Connection with Distributions Under Chapter 11 Plan* (the “Motion”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (a) my personal knowledge; (b) my review, or the review of FTI employees under my supervision and direction, of the relevant documents, including the Schedules, the Motion and each claim listed on Exhibits C, D and E thereto as part of the claims reconciliation process in these chapter 11 cases; and (c) information supplied to me by others at the request of the

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² Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Motion.

Reorganized Debtors or their professionals. If called upon to testify, I could and would competently testify to the facts set forth herein.

QUALIFICATIONS AND BACKGROUND

4. I have extensive experience with chapter 11 cases and other distressed restructurings, having advised debtors and various other stakeholders in the chapter 11 process for approximately 16 years. Since joining FTI in 1997,³ I have specialized in all aspects of bankruptcy case administration, including, among other things, claims review and reconciliation, preparation of statements and schedules, noticing and the development of custom solutions to complex case administration and claim reconciliation issues.

5. I received my Bachelor of Arts degree in Finance from Florida State University and an MBA from Indiana University. My business address is 3 Times Square 10th Floor, New York, NY 10036.

THE UNLIQUIDATED CLAIMS

6. Based upon my review (or that of FTI employees under my supervision) of the Unliquidated Claims, I have concluded that each of the claims listed on Exhibits C, D, and E to the Motion should be estimated in the amount set forth therein.

7. Each of the Partially Unliquidated Claims listed on Exhibit C to the Motion comprises a liquidated and unliquidated component. Upon review of the Debtors' books and records as well as the supporting documentation submitted with the claims listed on Exhibit C, if any, I see no indication that the Reorganized Debtors are responsible for any amounts greater than the liquidated amounts asserted in such claims.

³ I joined Coopers & Lybrand in 1997, which merged in 1998 with Price Waterhouse to become PricewaterhouseCoopers ("PWC"). In 2002, FTI acquired PWC's U.S. Business Recovery Services Division, of which I was a part.

8. Accordingly, I conclude that it is appropriate to estimate each Partially Unliquidated Claim listed on Exhibit C to the Motion at its asserted liquidated amount. Nevertheless, I believe that it is appropriate, for the purposes of creating the Reserve, to add a 10% cushion (the “Cushion”) to the aggregate estimated amount of these Partially Unliquidated Claims in case any of the claims listed on Exhibit C is ultimately allowed in an amount exceeding that at which it is being estimated.

9. Furthermore, for the reasons set forth in the Seventh Omnibus Objection, I conclude that it is appropriate to estimate each of the Partially Unliquidated Claims listed on Exhibit D (with the exception of claim nos. 97 and 98) at \$0, pending the Court’s order disallowing and expunging such claims pursuant to the Seventh Omnibus Objection.

10. With respect to claim nos. 97 and 98, having reviewed the supporting documentation, the Reorganized Debtors’ advisors have verified that the portion of each of these claim asserted on account of legal fees is not duplicative of the Agent Claims. Accordingly, I conclude that it is appropriate to estimate claim nos. 97 and 98 at the amount of legal fees asserted therein, as set forth on Exhibit D.

11. For the reasons set forth below, I have concluded that each of the Wholly Unliquidated Claims listed on Exhibit E to the Motion should be estimated at \$0 for the purposes of establishing the Reserve.

12. Claim no. 58 asserts a claim on account of a guarantee of contingent obligations under a purchase agreement entered into in April 2010 relating to purchase price, tax liabilities, and indemnification obligations.

13. Claim nos. 79 and 80 were filed by a former employee of Arcapita Inc. without any supporting documentation whatsoever. Upon review of the Debtors’ books and records, I

conclude that the Debtors' only liability to this claimant is that on account of which he already has allowed claims (claim nos. 77 and 78).

14. Claim nos. 65 and 66 assert contingent unliquidated claims under a guarantee arising under a credit facility provided by the claimant, HSH Nordbank, and other lenders to one of the Debtors' portfolio companies (the "Nordbank Facility"). To my knowledge, the only default under the Nordbank Facility was the guarantor's bankruptcy filing, and the portfolio company at issue remains in compliance with its obligations thereunder. Based on materials provided to me by the Reorganized Debtors' professionals, the portfolio company's obligations under the Nordbank Facility are secured by its assets, the value of which FTI believes to exceed the total amount of obligations outstanding under the Nordbank Facility. Based on the foregoing, I conclude that it is appropriate to estimate claim nos. 65 and 66 at \$0 for purposes of establishing the Reserve.

15. Finally, with respect to claim nos. 348 and 349, the claimant fails to allege any basis for recovery or that the claimant has suffered any loss. Instead, as stated in the proofs of claim themselves, claim nos. 348 and 349 were filed solely to preserve any rights that the claimant "may" have against the Debtors arising out of agreements to which no Debtor is a party. FTI has not been able to identify any basis for liability. Accordingly, for the purpose of establishing the Reserve, it is appropriate to estimate claim nos. 348 and 349 at \$0.

16. I believe that the size of the Cushion (over \$42 million) is sufficient to cover the eventuality that any of the Unliquidated Claims is ultimately liquidated in an amount greater than that at which it is being estimated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: November 1, 2013
New York, New York

/s/ Scott A. Rinaldi
Scott A. Rinaldi

Exhibit C

Partially Unliquidated Claims

ARCAPITA BANK B.S.C.(C), ET AL.

EXHIBIT C

PARTIALLY UNLIQUIDATED CLAIMS

	NAME OF CLAIMANT	CLAIM NO.	DEBTOR & CASE NO.	ASSERTED AMOUNT	ESTIMATED RESERVE AMOUNT	OMNIBUS OBJECTION (IF ANY)
1	Arcsukuk (2011-1) Limited	481	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$100,263,769.29*	\$100,263,769.29	None
2	Arcsukuk (2011-1) Limited	519	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$100,263,769.29*	\$100,263,769.29	None
3	Commerzbank AG	504	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$165,525,000.00*	\$165,525,000.00	None
4	Commerzbank AG	505	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$17,214,600.00*	\$17,214,600.00	None
5	Employee 1001 [Address on File]	305	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$3,998,965.02*	\$3,998,965.02	Fifth Omnibus Objection (Schedule 1)
6	GP Zachariades Overseas Ltd.	383	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$20,748,703.18*	\$20,748,703.18	Third Omnibus Objection (Schedule 4)
7	Investor 50344 [Address on File]	88	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$1,743,305.46*	\$1,743,305.46	None
8	Investor 50777 [Address on File]	138	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$31,874.04*	\$31,874.04	None
9	Investor 50788 [Address on File]	92	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$10,626,925.83*	\$10,626,925.83	None
10	Investor 52022 [Address on File]	124	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$521,270.62*	\$521,270.62	None
11	ZCOF Chicago Hotel LLC	81	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$4,047,642.33*	\$4,047,642.33	Third Omnibus Objection (Schedule 4)
SUB-TOTAL				\$424,985,825.06*	\$424,985,825.06	
+ 10% CUSHION					+ \$42,498,582.51	
TOTAL					\$467,484,407.57	

* Plus unliquidated, punitive and/or undetermined amounts.

Exhibit D

Partially Unliquidated Claims

ARCAPITA BANK B.S.C.(C), ET AL.

EXHIBIT D

PARTIALLY UNLIQUIDATED CLAIMS

	NAME OF CLAIMANT	CLAIM NO.	DEBTOR & CASE NO.	ASSERTED AMOUNT	ESTIMATED RESERVE AMOUNT	OMNIBUS OBJECTION (IF ANY)
1	AKA Ausfuhrkredit-Gesellschaft MBH	163	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$10,020,405.78*	\$0.00	Seventh Omnibus Objection (Exhibit A)
2	AKA Ausfuhrkredit-Gesellschaft MBH	164	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$10,020,405.78*	\$0.00	Seventh Omnibus Objection (Exhibit A)
3	Archview Fund LP	276	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$3,094,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
4	Archview Fund LP	277	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$3,094,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
5	Archview Fund LP	283	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$3,094,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
6	Archview Fund LP	284	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$3,094,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
7	Archview Master Fund Ltd	278	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$5,501,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
8	Archview Master Fund Ltd	279	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$5,501,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
9	Barclays Bank Plc	109	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$30,061,217.34*	\$0.00	Seventh Omnibus Objection (Exhibit A)
10	Barclays Bank Plc	110	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$30,061,217.34*	\$0.00	Seventh Omnibus Objection (Exhibit A)
11	Fortis Bank SA/NV	97	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$40,106,741.11*	\$12,000.00	Seventh Omnibus Objection (Exhibit A)
12	Fortis Bank SA/NV	98	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$40,106,741.11*	\$12,000.00	Seventh Omnibus Objection (Exhibit A)
13	Goldman Sachs Lending Partners LLC	36	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$30,061,217.33*	\$0.00	Seventh Omnibus Objection (Exhibit A)
14	Goldman Sachs Lending Partners LLC	37	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$30,061,217.33*	\$0.00	Seventh Omnibus Objection (Exhibit A)
15	Investor 51372 [Address on File]	86	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$20,398,026.25*	\$0.00	Seventh Omnibus Objection (Exhibit A)
16	Midtown Acquisitions LP	424	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$50,050,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
17	Midtown Acquisitions LP	425	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$50,050,000.00*	\$0.00	Seventh Omnibus Objection (Exhibit A)
			TOTAL	\$364,375,189.37*	\$24,000.00	

* Plus unliquidated, punitive and/or undetermined amounts.

Exhibit E

Wholly Unliquidated Claims

ARCAPITA BANK B.S.C.(C), ET AL.

EXHIBIT E

WHOLLY UNLIQUIDATED CLAIMS

	NAME OF CLAIMANT	CLAIM NO.	DEBTOR & CASE NO.	ASSERTED AMOUNT	ESTIMATED RESERVE AMOUNT	OMNIBUS OBJECTION (IF ANY)
1	Employee 1004 [Address on File]	79	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	None
2	Employee 1004 [Address on File]	80	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	None
3	Esselte Corporation	58	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	None
4	HSH Nordbank AG Cayman Islands Branch	66	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	None
5	HSH Nordbank AG New York Branch	65	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	None
6	Jill Superco LLC	348	Arcapita Investment Holdings Limited 12-11077 (SHL)	Undetermined	\$0.00	Third Omnibus Objection (Schedule 2)
7	Jill Superco LLC	349	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined	\$0.00	Third Omnibus Objection (Schedule 2)
TOTAL				Undetermined	\$0.00	