

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Attorneys for the Debtors
and Debtors in Possession

**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
	:	
-----X	:	

**DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS TO
FILE UNDER SEAL CONFIDENTIAL EMPLOYEE INFORMATION**

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*"), submit this motion (the "*Motion*") for an order pursuant to section 107(b) of title 11 of the United States Code (the "*Bankruptcy Code*")² and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") authorizing the Debtors and other parties involved in these cases filed under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*") to: (a) redact confidential information regarding plan participants, performance metrics and awards under the Debtors' proposed incentive and retention programs (the "*Confidential Information*") as described in

² All statutory references are to the Bankruptcy Code unless otherwise specified.

Exhibits C and E annexed to the *Debtors' Motion for an Order pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors To Implement Employee Programs and Global Settlement of Claims* (the "***Employee Motion***")³ and in other disclosures, applications, motions, and other pleadings (collectively, "***Disclosures***") filed publicly with the Court (each redacted Disclosure, a "***Redacted Disclosure***"); (b) file unredacted copies of such Disclosures ("***Unredacted Disclosures***") with the Court under seal; and (c) provide Unredacted Disclosures to professionals for the Official Committee of Unsecured Creditors (the "***Committee***") and the United States Trustee for the Southern District of New York (the "***United States Trustee***"). In support of the Motion, the Debtors respectfully represent:

JURISDICTION

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

BACKGROUND

2. On March 19, 2012 (the "***Petition Date***"), Arcapita and five of its affiliates (collectively, the "***Initial Debtors***") commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code (along with the cases of the Initial Debtors, the "***Chapter 11 Cases***"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 5, 2012, the United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors [Dkt. No.

³ Each capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Employee Motion.

60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code (previously defined as the “*Committee*”).

3. Founded in 1996, Arcapita, through its Debtor and non-Debtor subsidiaries (collectively, with Arcapita, the “*Arcapita Group*”), is a leading global manager of Shari’ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States, as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain (the “*CBB*”). The Arcapita Group employs approximately 265 people and has offices in Atlanta, London, Hong Kong, and Singapore in addition to its Bahrain headquarters. The Arcapita Group’s 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. The Arcapita Group also derives revenue from managing assets for its third-party investors.

RELIEF REQUESTED

4. By this Motion, the Debtors seek entry of an order pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, substantially in the form annexed hereto as **Exhibit A** (the “*Proposed Order*”), authorizing the Debtors and other parties involved in these Chapter 11 Cases to: (a) redact the Confidential Information in the Employee Motion and any other Disclosures filed publicly with the Court; (b) serve Unredacted Disclosures with the Court under seal; and (c) provide Unredacted Disclosures to professionals for the Committee and the United States Trustee.

BASIS FOR RELIEF REQUESTED

5. Section 107(b) provides, in relevant part, as follows: “On request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .” 11 U.S.C. § 107(b).

6. Bankruptcy Rule 9018 provides, in relevant part, as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . contained in any paper filed in a case under the Code....

Fed. R. Bankr. P. 9018.

7. The Second Circuit has held that section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). In addition, the Second Circuit has held that a party seeking to seal information is required to show only that the information is confidential and commercial. No showing of “good cause” is necessary, although as set forth below, the Debtors here have demonstrated that good cause does exist. *Id.*

8. By this Motion, the Debtors seek to limit public access to a very narrow set of information: confidential information regarding the KEIP and KERP. The Debtors’ rationale for the relief requested is that the Debtors have historically kept Employee compensation program confidential and making the Disclosures public could impair Employee morale and provide competitors with confidential information regarding Employee’s salaries and the Debtors’ overall compensation structure. The Debtors limited the KEIP and KERP to a total of less than 60 Employees. Making public the names and awards of the KEIP and KERP

participants, therefore, could cause friction between plan participants and non-plan participants (and even fellow plan participants who stand to receive different awards). Disclosure of the terms or conditions of the KEIP and KERP thus could undermine the purpose of the Employee Programs.

9. The Debtors will share unredacted copies of the Disclosures with professionals for the Committee and the United States Trustee soon after the filing of the Employee Motion (and in any case, well in advance of any objection deadline with respect to the motion). Therefore, public disclosure of the terms of the Disclosures is not necessary to protect the interests of the Debtors' creditors. Furthermore, any party or member of the public with a compelling interest in learning the terms of the Disclosures may request a further order from this Court. In sum, the relief sought in this Motion is necessary to protect the confidential commercial information of the Debtors and will not impair the ability of this Court to protect the public interest.

NO PRIOR REQUEST

10. No previous motion for the relief sought in this Motion has been made to this or any other Court.

NOTICE

11. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the 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.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.); and (iii) all parties listed on the Master

Service List established in these Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, GCG, at www.gcginc.com/cases/arcapita.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 5, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

GIBSON, DUNN & CRUTCHER LLP

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

HEARING DATE AND TIME: June 26, 2012 at 11:00 a.m. (Eastern Time)

OBJECTION DEADLINE: June 19, 2012 at 12:00 p.m. (Eastern Time)

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Attorneys for the Debtors
and Debtors in Possession

**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
	:
	:
-----X	

NOTICE OF HEARING ON DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CONFIDENTIAL EMPLOYEE INFORMATION

PLEASE TAKE NOTICE that a hearing on the annexed motion, dated June 5, 2012 (the "**Motion**") of Arcapita Bank B.S.C.(c) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**") 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 (the "**Bankruptcy Court**"), One Bowling Green, New York, New York, 10004, on **June 26, 2012 at 11:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the "**Objections**") shall be filed electronically with the Court on the docket of *In re Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the "**Docket**"), pursuant to the Case

Management Procedures approved by this Court¹ and the Court's General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court's case filing system and by all other parties in interest on a 3.5 inch 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 Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) proposed counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq. and Matthew K. Kelsey, Esq.); (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.); and (iii) counsel for the Official Committee of Unsecured Creditors of Arcapita Bank B.S.C.(c), *et al.*, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005 (Attn: Dennis Dunne, Esq. and Evan R. Fleck, Esq.), so as to be received no later than **June 19, 2012 at 12:00 p.m.** (Eastern Time) (the "**Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

¹ See Order (A) Waiving the Requirement That Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of a Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures [Dkt. No. 21].

Dated: New York, New York
June 5, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Janet M. Weiss (JW-5460)
Matthew K. Kelsey (MK-3137)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

**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
	:	
-----X		

ORDER GRANTING DEBTORS’ MOTION FOR ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CONFIDENTIAL EMPLOYEE INFORMATION

Upon consideration of the motion (the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an order pursuant to Bankruptcy Code § 107 and Bankruptcy Rule 9018, authorizing the Debtors and other parties involved in these cases filed under chapter 11 of the Bankruptcy Code to: (a) redact confidential information regarding plan participants, performance metrics and awards under the Debtors’ proposed incentive and retention programs as described in **Exhibits C and E** annexed to the Debtors’ *Motion Pursuant To Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors To Implement Employee Programs and Global Settlement of Claims* (the “*Employee Motion*”) and in other disclosures, applications, motions, and other pleadings (collectively, “*Disclosures*”) filed publicly with the Court; (b) serve unredacted copies of such Disclosures with the Court under seal; and (c) provide unredacted copies of such Disclosures to professionals for the Official Committee of Unsecured Creditors (the “*Committee*”) and the United States

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Trustee for the Southern District of New York (“*United States Trustee*”); it appearing that the relief requested in the Motion is appropriate in the context of these cases and in the best interests of the Debtors and their respective estates; the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the “*Hearing*”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is approved to the extent set forth herein.
2. Pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors and any other party involved in these Chapter 11 cases may redact references to the Confidential Information in any Disclosure (defined in the Motion as a “*Redacted Disclosure*”), and serve such Redacted Disclosure on all parties entitled to notice thereof under the Bankruptcy Code, the Bankruptcy Rules or any other applicable order.
3. The clerk of the Bankruptcy Court shall accept for filing under seal an unredacted copy of any Disclosure that is publicly filed in redacted form pursuant to this Order (defined in the Motion as an “*Unredacted Disclosure*”).
4. The Unredacted Disclosure shall be available to the Court, but otherwise shall remain under seal and may not be unsealed until and unless authorized by an order of the Court.
5. The Debtors shall serve a copy of any Unredacted Disclosure, permitted pursuant to this Order, on professionals for the Committee and the United States Trustee.

6. The Debtors shall provide a copy of an Unredacted Disclosure as required by an order of this Court or other Court of competent jurisdiction.

7. This Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE