

**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), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
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**CORRECTED INTERIM ORDER PURSUANT TO SECTIONS 327(a) AND 330
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO
RETAIN AND EMPLOY KPMG LLP AS VALUATION ADVISOR TO THE
DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

Upon consideration of the Application (the “**Application**”) ¹ of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**” and each, a “**Debtor**”), for entry of an order pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”) authorizing the Debtors to retain and employ KPMG LLP (“**KPMG UK**”) as a valuation advisor to the Debtors *Nunc Pro Tunc* to the Petition Date; and upon the Fletcher Declaration in support thereof; and upon the *First Supplemental Declaration of David Fletcher in Support of Debtors’ Application Pursuant to Sections 327(a) and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Valuation Advisor to the Debtors Nunc Pro Tunc*

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

to the Petition Date [Dkt. No. 183]; and upon the *Second Supplemental Declaration of David Fletcher in Support of Debtors' Application Pursuant to Sections 327(a) and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Valuation Advisor to the Debtors Nunc Pro Tunc to the Petition Date* [Dkt. No. 190]; and the Court having found that it has jurisdiction to consider this Application pursuant to 28 U.S.C. sections 157 and 1334; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and informal comments having been received from the Office of the United States Trustee for the Southern District of New York (the "*U.S. Trustee*"); and the Official Committee of Unsecured Creditors' (the "*Committee*") having filed an objection to the Application (the "*Objection*") [Docket No. 185]; and the Court having found that the relief requested in the Application is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application 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 Application and at the Hearing establish just cause for the interim 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 Application is granted on an interim basis to the extent set forth herein.
2. In accordance with sections 327(a) and 330 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, the Debtors are authorized on an interim basis to

employ and retain KPMG UK *nunc pro tunc* to the Petition Date as their valuation advisor on the terms set forth in the Application.

3. As set forth in the Application and the Engagement Letter, KPMG UK is authorized to undertake its valuation analysis on the basis of market value, defined as the price attainable between a willing buyer and willing seller, and authorized to consider the robustness of the underlying business plan and utilize commercial valuation methodologies as it considers appropriate for each individual company/investment in reaching its conclusion on value, including where appropriate, work relating to the review of robustness of underlying business plan assumptions:

- Review and comment on the commercial environment in which the entity operates identifying key risks and opportunities that impact on current and medium term business value.
- Review and comment on the forecast trading (including appropriate analysis of the components of revenues and costs) and cash flows.
- Summarize and independently challenge the key assumptions that underpin the forecast trading in light of recent and current trading, and comment on the key value drivers underpinning the forecasts.
- Review and comment on the reasonableness or otherwise of the key assumptions, highlighting where appropriate areas of vulnerability, sensitivity or potential upside.
- Taking into account the above, comment on the adequacy of the entity's existing funding through to the proposed exit date, including the ability of the entity to operate within the terms of its existing facilities and the potential for any additional funding.

Valuation methodologies KPMG is authorized to consider:

- Discounted Cash Flow ("DCF"): as applicable, assess value with reference to future projections, to be provided by management and any sensitivity analysis undertaken for the Business Plan Reviews ("BPRs"). This will include, inter alia:
 - derivation of an appropriate discount rate,
 - determination of an appropriate terminal value growth rate, and
 - consideration of the sensitivity of the valuation to small changes in key value drivers.
- Capitalized Earnings: assess value by reference to the capitalization of near-term normalized earnings at an appropriate multiple range with reference to:

- the expected level of future operating performance of the business,
 - the life-cycle stage of the business as at the valuation date, and
 - reference to publically listed companies displaying similar characteristics and/or recent sector transactions.
- Adjusted Net Asset Value (“ANAV”): consider value with reference to the current financial position of the investee company with reference to:
 - marking every asset and liability on (and off) the balance sheet to current market values,
 - application of a premium or discount to reflect the profitability, the market position and overall attractiveness of the business, and
 - comparison of net assets plus the premium or discount to the net asset value using price to book multiple for comparable quoted companies.
 - An ANAV approach to value will be primarily applicable to real estate investments.
 - Forced exit basis: assess the potential implications of the following issues that may be relevant in the event of a forced exit in a:
 - nonconsensual sale of a minority or non-controlling stake;
 - distressed sale and an assessment of discount applied by potential buyers;
 - scenario in which there is a lack of funding available to enable the underlying business to achieve its business plan or maintain its current capital structure.

KPMG is authorized to consider in respect of its valuation analysis valuation at two dates: the value of the companies/investments as at a current date and the expected future value of the companies/investments based on Arcapita’s anticipated exit date (or other date to be agreed between Arcapita and the Advisers) and own internal valuation analysis.

4. Notwithstanding anything to the contrary in the Engagement Letter, the Application⁷ or the Fletcher Declarations, to the extent that the Debtors request KPMG UK to perform any services other than those detailed in Paragraph 4 above, the Debtors shall file a further application for an order of approval by the Court for a supplement to the retention and such application shall set forth, in addition to the additional services to be performed, the additional fees sought to be paid.

5. KPMG UK shall be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Order Granting Debtors' Motion For Order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses For Professionals And Committee Members, the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases M-389 (Nov. 25, 2009), and the U.S. Trustee Guidelines (the "*Fee Guidelines*"), and any other applicable orders or procedures of this Court.

6. KPMG UK shall include in its fee applications, among other things, time records setting forth a summary description of the services rendered by each professional, and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in one-tenth (0.1) hour increments.

7. KPMG UK shall be reimbursed only for reasonable and necessary expenses as provided by the Fee Guidelines or any applicable order of this Court.

8. Notwithstanding anything in the Application or the Engagement Letter to the contrary, KPMG UK shall (i) to the extent that KPMG UK uses the services of independent contractors, subcontractors or employees of foreign affiliates or subsidiaries (collectively, the "*Contractors*") in these cases, pass-through the cost of such Contractors to the Debtors at the same rate that KPMG UK pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflict checks as required for KPMG UK and that appropriate disclosures are made; and (iv) with respect to any independent contractors or subcontractors that are not affiliated with KPMG International, take appropriate steps to require such person or entity to file with the Court such disclosures required by Bankruptcy Rule 2014.

9. KPMG UK shall provide ten (10) days' notice to the Debtors, the U.S. Trustee, and the Committee in connection with any increase in the hourly rates listed in the Fletcher Declaration and/or the Application.

10. KPMG UK shall use reasonable efforts to coordinate, with the assistance of the Debtors, with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

11. The Engagement Letter, including, without limitation, the Fee and Expense Structure and the Engagement Provisions, is approved on an interim basis in all respects, except as otherwise set forth herein; *provided that* any fees paid or to be paid to KPMG UK pursuant to this Interim Order may not be challenged on the basis that (i) the services provided by KPMG UK are duplicative of another professional in these Chapter 11 cases and (ii) the fees were paid or to be paid pursuant to this Interim Order; *provided further that*, KPMG UK's fees and expenses shall be subject to review pursuant to section 330 of the Bankruptcy Code, and the U.S. Trustee shall retain the right to object to fees paid or to be paid to KPMG UK pursuant to this Interim Order on any grounds.

12. KPMG UK will apply any remaining portion of the Retainer as a credit toward postpetition fees and expenses, as such postpetition fees and expenses become allowed and payable by the Debtors to KPMG UK pursuant to the procedures for interim compensation of professionals adopted by the Bankruptcy Court in these Chapter 11 cases.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Application.

14. While KPMG UK is employed by the Debtors during the pendency of these Chapter 11 Cases, to the extent the terms of this Interim Order differ from the Engagement

Letter, the Prior Engagement Letter, or the Application, the terms of this Interim Order shall govern.

15. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

16. To the extent a final order in respect of the Application has not been entered prior to June 26, 2012 at 2:00 p.m. (prevailing Eastern Time), or at such later time as may be set by the Court, then the final hearing regarding the Application shall be heard on such date. The deadline by which objections to entry of the Final Order must be filed is June 19, 2012 at 12:00 p.m. (prevailing Eastern Time) and served upon (i) 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.); (iii) proposed counsel to the Official Committee of Unsecured Creditors, 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) counsel to KPMG UK, Willkie Farr & Gallagher LLP, 787 7th Avenue, New York, New York 10019 (Attn: Robin Spigel, Esq.).

Dated: New York, New York
June 12, 2012

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