

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet 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**

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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		

**SUPPLEMENT TO 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**

On June 5, 2012 (the “*Filing Date*”), Arcapita Bank B.S.C.(c) (“*Arcapita*”) and its affiliated debtors and debtors in possession (collectively, the “*Debtors*”) filed 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* [Docket No. 205] (the “*Original Motion*”)¹ in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”).

¹ Each capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Original Motion.

1. The Original Motion: By the Original Motion, the Debtors requested that the Court to enter an order authorizing the Debtors to implement a Key Employee Retention Program (“**KERP**”) for non-insider Employees, a Key Employee Incentive Plan (“**KEIP**”) for insider and non-insider Employees, a Severance Program for Employees terminated without cause during the Chapter 11 Cases and a Global Settlement of claims between the Arcapita Group and its Employees arising in connection with prepetition incentive plans. Set forth as **Exhibit C** to the Original Motion is a list of the KEIP participants along with their titles, applicable KEIP target awards and KEIP Performance Goals. Set forth as **Exhibit E** to the Original Motion is a list of the KERP participants along with applicable potential KERP awards.

2. The Severance Program and Global Settlement, if approved, will implement a proposed reduction in force of Arcapita Group Employees (employed by Debtor Arcapita and four non-Debtor affiliates). Specifically, the Severance Program will provide Terminated Employees with consistent and fair treatment in compliance with local law, thereby mitigating the risk of Employee litigation (a large percentage of which could be raised against non-Debtors not subject to the protections of the Bankruptcy Code). To that end, the Severance Program is structured to settle all Terminated Employee claims against the Arcapita Group for prepetition benefits and monetary awards, including claims arising in connection with holiday pay, unpaid prepetition cash bonuses and a stock purchase plan.

3. Annexed is this Supplement as **Annexes 1 and 2** are revised **Exhibits C and E** that supersede the original versions of such exhibits annexed to the Original Motion.² In

² On the Filing Date, in connection with the Original Motion, the Debtors filed the *Debtors’ Motion for an Order Authorizing the Debtors to File under Seal Confidential Employee Information* [Docket No. 206] (the “**Sealing Motion**”). Pursuant to the Sealing Motion, the Debtors requested authority to file ***Exhibits C and E*** to the Original Motion under seal. For the avoidance of doubt, the Debtors intend for the relief requested pursuant to

addition, as a result of further reflection and analysis by the Debtors and their advisors and discussions with the Committee, the Debtors have made minor revisions to the KEIP, KERP and workforce reduction.³ This Supplement provides additional information regarding all such changes and their effect, if any, on cost analyses of the Employee Programs reflected in the Original Motion.

A. PROPOSED MODIFICATIONS TO THE KERP AND THE KEIP

4. At the Filing Date, the Debtors and the Committee were continuing to negotiate in good faith to finalize the structure of the workforce reduction and the Employee Programs. Original Motion fn 4. The Committee generally supported the Debtors' plans to restructure the Arcapita Group workforce and motivate continuing Employees to deliver superior performance for the benefit of existing financial stakeholders. Work remained to be completed, however, to finalize a few aspects of the Employee Programs, most notably the KEIP Performance Goals. The Committee's support for the Original Motion was subject to the Committee's final review and approval of the terms of the KEIP. Original Motion fn 5.

5. Since the Filing Date, the Debtors and their advisors have worked to further develop and refine the KEIP Performance Goals and KEIP awards to properly motivate continuing Employees. As noted in the Original Motion, pursuant to the KEIP, the Debtors' management opted to fashion an incentive plan which establishes individual metrics for each individual KEIP participant (rather than link Employee compensation to one overall metric).

[Footnote continued from previous page]

the Sealing Motion to apply to the revised *Exhibits C and E* as if such documents were the versions of the exhibits annexed to the Original Motion.

³ The Debtors reserve the right to continue to define the number and identities of the Terminated Employees after the filing of this Supplement. Any further changes will be disclosed prior to or at the hearing on the Original Motion.

Structuring such a measured and tailored program, however, required substantial time and effort. Specifically, time was spent considering the proper goals for particular KEIP participants.

6. All post-Filing Date modifications to the KEIP Performance Goals, as reflected in the revisions to **Exhibit C**, made the awards harder to attain or otherwise reduced the cost of the program. For example, under the current KEIP proposal, all restructuring based milestones must now be achieved within a specific time period for the applicable Employee to receive an award. Other Employees who previously only had one KEIP Performance Goal now must satisfy two separate milestones to receive a full KEIP award. In addition, after careful consideration, the Debtors decided to reduce the size of the KEIP and KERP participant pools by four Employees in aggregate (three Employees in the KERP and another in the KEIP). The modifications reduced the total pool of KERP participant Employees to 36 non-insider Employees and KEIP participant Employees to 4 insider and 15 non-insider Employees. As a result, the total cost of the KERP and KEIP (at target) has decreased by approximately \$10,000.⁴ The revised KERP participant pool is reflected in revised **Exhibit E**.

7. Since the Filing Date, the Debtors have further clarified how KEIP awards are earned for the achievement of partial or full achievement of targeted EBITDA or cost reduction goals (“***Financial KEIP Performance Goals***”). KEIP participants with Financial KEIP Performance Goals are ineligible to receive a KEIP award if the Arcapita Group fails to achieve 90% (or 80% for one non-insider Employee whose Financial KEIP Performance Goal is linked to cost reductions) of the stated Financial KEIP Performance Goal. If the Arcapita Group achieves 90% (or 80% for the one non-insider Employee) of the stated Financial KEIP

⁴ This amount of variance also reflects any changes made to individual award sizes under the KEIP.

Performance Goal, the applicable KEIP participant may receive 75% of his or her target KEIP award. If the Arcapita Group achieves 110% (or 120% for the same non-insider) of the stated KEIP Performance Goal, the applicable KEIP participant is eligible to receive 125% of his or her target KEIP award. And, finally, if the Arcapita Group achieves over 90% (or 80%, as applicable) but less than 110% (or 120%, as applicable) of the stated KEIP Performance Goal, the size of the earned KEIP award will be interpolated using straight line interpolation from a 75% payout to a 125% payout.

8. A KEIP Participant's KEIP award shall be due and payable upon the earlier of (a) two months after the full or partial achievement of such KEIP participant's KEIP Performance Goal or (b) termination without cause (assuming the KEIP Performance Goal has been or ultimately is achieved). Fifty percent (50%) of a KERP Participant's KERP award shall be due and payable at the end of the end of the 2012 calendar year and the remaining fifty percent (50%) shall be due and payable at consummation of a chapter 11 plan or liquidation of the estates; *provided, however*, that if an Employee eligible for a KERP award is terminated without cause prior to consummation of a chapter 11 plan or liquidation of the estates, such award shall become immediately due and payable.

9. The Debtors' proposed KEIP Performance Goals are designed to motivate the KEIP participants to maximize value for all of the Debtors' stakeholders (in particular, creditors) by rewarding participants for meeting targeted financial performance and restructuring goals. Recent modifications to the KEIP Performance Goals have reinforced the link between Employee compensation and creditor recoveries by, for example:

- incorporating defined six month EBITDA targets for seven separate Arcapita Group portfolio companies into certain KEIP Performance Goals. In aggregate, the KEIP Performance Goal EBITDA targets are

approximately 10% higher than the seven portfolio companies' aggregate EBITDA for the last two quarters of 2011;

- adding KEIP Performance Goals for certain participants relating to the Arcapita Group's monetization of specific assets, recoveries from which would flow to creditors;
- conditioning receipt of awards for accomplishment of restructuring milestones on such milestones being accomplished by a specific date, in order to motivate Employees to help consummate the Chapter 11 Cases quickly, minimizing professional costs and other administrative expenses;
- establishing a specific cost reduction goal for one KEIP participant; and
- adding new KEIP Performance Goals for multiple participants relating to their preventing their direct reports from leaving the Arcapita Group, thereby preventing unintended losses of institutional knowledge.

In conclusion, the KEIP Performance Goals are designed to motivate Employees to deliver superior performance to the benefit the estates and Arcapita Group financial stakeholders.

B. PROPOSED MODIFICATIONS TO THE REDUCTION IN FORCE

10. If approved, the Severance Program and Global Settlement will implement a planned Arcapita Group reduction in force. At the Filing Date, the Arcapita Group projected that such reduction in force would consist of 96 Terminated Employees (all terminated without cause). The reduction reflected the current reduced scope of Arcapita Group operations. Previously Arcapita Group Employees worked to manage and maintain current Arcapita Group investments and portfolio companies and search out new investment opportunities. Since the Petition Date, however, the Debtors have restricted operations to managing and monetizing their interests in current Arcapita Group investments. As a result, many jobs have been rendered redundant or otherwise superfluous.

11. Since the Filing Date, the Debtors have continued to refine the proposed workforce reduction. Currently, the Debtors intend to terminate 94 Employees without cause

soon after entry of an order approving the Severance Program and Global Settlement. This modification to the pool of Terminated Employees, has caused the following changes to the Original Motion:

- The projected run rate savings to the Arcapita Group in wages and other benefits approximates to \$770,000 per month (compared with the \$830,000 estimate in the Original Motion, *see* Original Motion ¶ 57).
- The projected cash cost of the Severance Program and the Global Settlement (in each case, for the Terminated Employees) is \$4.1 million (compared with the \$4.5 million estimate in the Original Motion, *see* Original Motion ¶ 58). The projected cash cost has decreased on account of slight changes in the makeup of the Employee population included in the Severance Program and the Employee Loans discussed in paragraph 12 below.
- As a result of the foregoing, the projected cash “payback period” for the workforce reduction equals approximately 5.3 months (compared with the five and one-half month “payback period” in the Original Motion, *see* Original Motion ¶ 58) and the Debtors expect to generate savings of approximately \$5.2 million in cash over the next 12 months.
- The Debtors estimate that the Terminated Employees account for approximately \$3.65 million of total outstanding obligations under the IPP/IIP and \$83,000 of the Net Obligations (calculated as the shortfall in total obligations less the estimated fair value of the shares returned to the Arcapita Group via the Global Settlement) (compared with the \$4.76 million of total obligations and \$46,000 of Net Obligations estimates in the Original Motion, *see* Original Motion ¶ 38).

C. PROPOSED TREATMENT OF ADDITIONAL EMPLOYEE LOANS

12. As noted in the Original Motion, prior to the Petition Date, certain Employees received from the Arcapita Group interest-free loans, including upon a showing of need. Original Motion ¶ 13. These Employee Loans were incorporated into the calculation of any termination payments owed to Employees upon termination without cause in the Original Motion. Specifically, pursuant to the Severance Program, if an Employee owes an Arcapita Group entity value under an Employee Loan, at termination, Notice and Severance Payments and any other payments (including vacation payout and/or payout of private pension amounts) due

such Employee will be reduced by the outstanding principal amount of such loan. Original Motion ¶ 17.

13. After the Filing Date, additional due diligence uncovered the existence of additional Employee Loans relating to one specific real property project. All of these incremental Employee Loans were advanced approximately 6 years ago. Taking these additional Employee Loans into account, at the Petition Date, (a) 12 Terminated Employees collectively owed the Arcapita Group approximately \$581,000 of Employee Loans and (b) Employee Loans for continuing Employees approximated to \$4.0 million. The Debtors continue to propose to reduce from any Notice and Severance Payments owed a Terminated Employee the amount of any outstanding Employee Loans under the Severance Program; provided that, after taking into account all deductions, no Terminated Employee shall have net obligations to the Arcapita Group under the Severance Program.

D. PROPOSED MODIFICATIONS TO FORM OF ORDER

14. After the Filing Date, the Committee and the Debtors agreed to revisions to the proposed form of order annexed to the Original Motion. Annexed hereto as **Annex 3** are a revised form of order and a marked up version of the same which highlights all changes made to the form of order annexed to the Original Motion as **Exhibit A**. Specifically, changes to the proposed form of order include:

- the Debtors clarified that the KEIP Performance Goals may be modified after entry of the Order with the consent of the Committee or upon further order of the Court;
- the Debtors confirmed that cash amounts owed in respect of the Employee Programs shall constitute administrative claims against the estates;
- at the request of the Committee, the Debtors limited the time Employees have to elect in the Global Settlement; and

- further at the request of the Committee, the Debtors clarified that no Employee terminated for cause by the Arcapita Group shall be permitted to participate in the Global Settlement.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in the Original Motion (as modified by this Supplement) and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 22, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Craig H. Millet (admitted *pro hac vice*)

Janet 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

ANNEX 1

REVISED ORIGINAL MOTION EXHIBIT C

[Filed Under Seal]

ANNEX 2

REVISED ORIGINAL MOTION EXHIBIT E

[Filed Under Seal]

ANNEX 3

REVISED ORIGINAL MOTION 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 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**

Upon consideration of the motion (as amended or supplemented, the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) and certain of its subsidiaries, 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 authorizing the Debtors to implement the Employee Programs and the Global Settlement; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Debtors’ having filed a supplement to the Motion on June 22, 2012 (the “*Supplement*”); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors’ estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and the Supplement and having considered the statements in support of the

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

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 the Supplement 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 granted to the extent set forth herein.
2. The Debtors are authorized to implement the Employee Programs and pay the following amounts: (a) the Notice and Severance Payments; (b) the Accrued Vacation Payments; (c) the Private Pension Payments; (d) the Expatriate Expense Payments; and (e) KERP and KEIP awards, subject to the terms and conditions set forth in the Motion; *provided*, that all such payments, other than the KERP and KEIP awards, are subject to reduction by the amount of any outstanding Employee Loans.
3. The Debtors are further authorized, pursuant to sections 363 and 503 of the Bankruptcy Code, to take any other actions necessary to implement the KERP, KEIP and Severance Program (for all Employees terminated without cause during the Chapter 11 Cases) on the terms and conditions set forth in the Motion; *provided, however*, that the KEIP Performance Goals may be modified after the date of this Order, with the consent of the Committee or upon further order of the Court; *further provided*, that if any information provided to the Committee in connection with a Financial KEIP Performance Goal (as defined in the Supplement) is discovered to have been materially incorrect at the time such information was provided by the Debtors, and the Committee so notifies the Debtors by e-mail or in writing (such notice, a "**KEIP Notice**") and the Debtors do not dispute the KEIP Notice by e-mail or in writing, then the Debtors must propose an amended Financial KEIP Performance Goal reasonably acceptable to

the Committee prior to making any payment on account of the KEIP award related to such Financial KEIP Performance Goal. If the Debtors provide the Committee with written notification that they dispute a KEIP Notice, the Debtors may not make any payment on account of any KEIP award conditioned on a Financial KEIP Performance Goal related to the purportedly incorrect information covered by the KEIP Notice, pending approval by the Committee or the Court, which the Debtors are permitted to seek on an expedited basis.

4. Any Employee with an Accrued Bonus Claim has the right to file a proof of claim if his or her respective claim is omitted from the schedules and statements required pursuant to section 521 of the Bankruptcy Code and Rule 1007(c) of the Bankruptcy Rules. All other Employee claims arising under the KEIP, KERP and Severance Program shall constitute administrative expense priority claims against the Debtors under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

5. The Debtors are authorized to take any other actions necessary to implement the Global Settlement, including without limitation, pursuant to their execution of any agreement reasonably required to document a non-Terminated Employee's agreement to adhere the terms of the Global Settlement.

6. The Debtors are further authorized to make payments under a discretionary pool under the KERP in amounts not to exceed \$300,000, in aggregate; provided that, no Employee may receive more than \$30,000 in aggregate discretionary KERP payments absent Committee consent, which consent shall not be unreasonably withheld.

7. Employees shall be permitted to elect to participate in the Global Settlement at the earlier of (a) execution of documentation governing the terms of the termination of employment (if applicable) and (b) 120 days from the date of this Order; *provided, however*, notwithstanding

the foregoing, no Employee terminated for cause at any time (during the pendency of or subsequent to the Chapter 11 Cases) by the Arcapita Group shall be permitted to participate in the Global Settlement.

8. The Debtors are further authorized to suspend the Stock Purchase Plan.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

10. This Court shall retain exclusive jurisdiction to enforce the terms of this Order.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

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 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**

Upon consideration of the motion ([as amended or supplemented](#), the “*Motion*”) ¹ of Arcapita Bank B.S.C.(c) and certain of its subsidiaries, 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 authorizing the Debtors to implement the Employee Programs and the Global Settlement; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; [and the Debtors’ having filed a supplement to the Motion on June 22, 2012 \(the “*Supplement*”\)](#); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors’ estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and [the Supplement 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 [the Supplement 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 granted to the extent set forth herein.
2. The Debtors are authorized to implement the Employee Programs and pay the following amounts: (a) the Notice and Severance Payments; (b) the Accrued Vacation Payments; (c) the Private Pension Payments; (d) the Expatriate Expense Payments; ~~subject to reduction by the amount of any outstanding Employee Loans~~; and (e) KERP and KEIP awards, subject to the terms and conditions set forth in the Motion; provided, that all such payments, other than the KERP and KEIP awards, are subject to reduction by the amount of any outstanding Employee Loans.
3. The Debtors are further authorized, pursuant to sections 363 and 503 of the Bankruptcy Code, to take any other actions necessary to implement the KERP, KEIP and Severance Program (for all Employees terminated without cause during the Chapter 11 Cases) on the terms and conditions set forth in the Motion: provided, however, that the KEIP Performance Goals may be modified after the date of this Order, with the consent of the Committee or upon further order of the Court; further provided, that if any information provided to the Committee in connection with a Financial KEIP Performance Goal (as defined in the Supplement) is discovered to have been materially incorrect at the time such information was provided by the Debtors, and the Committee so notifies the Debtors by e-mail or in writing (such notice, a "**KEIP Notice**") and

[Footnote continued from previous page]

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

the Debtors do not dispute the KEIP Notice by e-mail or in writing, then the Debtors must propose an amended Financial KEIP Performance Goal reasonably acceptable to the Committee prior to making any payment on account of the KEIP award related to such Financial KEIP Performance Goal. If the Debtors provide the Committee with written notification that they dispute a KEIP Notice, the Debtors may not make any payment on account of any KEIP award conditioned on a Financial KEIP Performance Goal related to the purportedly incorrect information covered by the KEIP Notice, pending approval by the Committee or the Court, which the Debtors are permitted to seek on an expedited basis.

4. Any Employee with an Accrued Bonus Claim has the right to file a proof of claim if his or her respective claim is omitted from the schedules and statements required pursuant to section 521 of the Bankruptcy Code and Rule 1007(c) of the Bankruptcy Rules. All other Employee claims arising under the KEIP, KERP and Severance Program shall constitute administrative expense priority claims against the Debtors under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

5. The Debtors are authorized to take any other actions necessary to implement the Global Settlement, including without limitation, pursuant to their execution of any agreement reasonably required to document a non-Terminated Employee's agreement to adhere the terms of the Global Settlement.

6. The Debtors are further authorized to make payments under a discretionary pool under the KERP in amounts not to exceed \$300,000, in aggregate; provided that, no Employee may receive more than \$30,000 in aggregate discretionary KERP payments absent Committee consent, which consent shall not be unreasonably withheld.

7. Employees shall be permitted to elect to participate in the Global Settlement at the earlier of (a) execution of documentation governing the terms of the termination of employment (if applicable) and (b) 120 days from the date of this Order; *provided, however, notwithstanding the foregoing, no Employee terminated for cause at any time (during the pendency of or subsequent to the Chapter 11 Cases) by the Arcapita Group shall be permitted to participate in the Global Settlement.*

8. The Debtors are further authorized to suspend the Stock Purchase Plan.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

10. This Court shall retain exclusive jurisdiction to enforce the terms of this Order.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

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