

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

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: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **Jointly Administered**  
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**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*”)<sup>1</sup> 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

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<sup>1</sup> 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, however*, that all such payments, other than the KERP and KEIP awards, shall be reduced, via set-off, by the amount of any outstanding Employee Loans; *further provided*, that, to the extent the aggregate balance of Employee Loans outstanding to any Terminated Employee (or other Employee terminated without cause during the Chapter 11 Cases) exceeds the amount of Notice and Severance Payments, Accrued Vacation Payments, Private Pension Payments, and Expatriate Expense Payments otherwise due to such Employee, such excess balance of Employee Loans (after applying the Employee Loans to offset completely such payments otherwise due to such Employee) may be forgiven by the Debtors acting with Committee consent or further order of the Court.
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<sup>2</sup> 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.

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

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<sup>2</sup> The KEIP Performance Goals, as approved by this Court, include the completion of a business plan and delivery of the same to the Committee by August 15, 2012, the filing of a chapter 11 plan by October 1, 2012 and the completion of the reduction in force contemplated by the Motion.

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 and the suspension of the SPP.

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. **Exhibits C and E** of the Motion shall be replaced in their entirety with **Annexes 1 and 2** hereto.

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

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

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

Dated: New York, New York

**July 6, 2012**

/s/ Sean H. Lane

THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE



**ANNEX 1**

<u>Grade</u>	<u>KEIP Award (in months of wages)</u>
Executive Director	6
Director	10
Director	6
Director	6
Executive Director	12
Director	12
Executive Director	12
Executive Director	6
Director	6
Director	6
Director	6
Director	5
Director	3
Director	4
Director	3
Director	3
Director	5
Director	10
Director	8



**ANNEX 2**

**Arcapita Bank B.S.C.(c)**  
**KERP Schedule**

<u>Grade</u>	<u>KERP Award (in months of wages)</u>
Director	4
Director	4
Principal	3
Principal	3
Principal	3
Director	7
Director	8
Principal	6
Associate	8
Associate	6
Principal	2
Associate	2
Director	5
Director	4
Director	3
Director	5
Principal	4
Director	4
Director	3
Principal	5
Principal	4
Senior Associate	4
Associate	4
Principal	2
Senior Associate	2
Associate	2
Senior Associate	2

<u>Grade</u>	<u>KERP Award (in months of wages)</u>
Analyst	3
Analyst	3
Senior Associate	3
Director	4
Principal	5
Principal	3
Associate	5
Associate	3
Senior Associate	3