

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

-----x
In re : **Chapter 11 Case**
ARCAPITA BANK B.S.C.(c), et. al., : **Case No. 12-11076 (SHL)**
Debtors. : **Jointly Administered**
-----x

**FINAL ORDER AUTHORIZING DEBTORS TO
EMPLOY AND RETAIN ALVAREZ & MARSAL NORTH AMERICA, LLC
AS FINANCIAL ADVISORS TO DEBTORS AND DEBTORS IN POSSESSION
PURSUANT TO SECTIONS 327(a) AND 328 OF THE BANKRUPTCY CODE**

Upon the application (the “*Application*”) of the debtors in possession in the above-captioned case (collectively, the “*Debtors*” and each, a “*Debtor*”) for interim and final orders pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “*Bankruptcy Code*”), authorizing the Debtors to employ and retain Alvarez & Marsal North America, LLC, together with employees of its affiliates (all of which are wholly-owned by its parent company and employees), its wholly owned subsidiaries, and independent contractors (collectively, “*A&M*”) as financial advisors, nunc pro tunc to the date of filing of these cases (the “*Petition Date*”) on the terms set forth in the engagement letter (the “*Engagement Letter*”) annexed to the Application as Exhibit B; and upon the Declaration of Lawrence R. Hirsh in support of the Application annexed thereto as Exhibit C; and due and adequate notice of the Application having been given; and the Court being satisfied that A&M is a “disinterested person” as such term is defined under section 101(14) of the Bankruptcy Code; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Application is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Application is granted to the extent set forth herein on a final basis.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.
3. Pursuant to sections 327(a) and 330 of the Bankruptcy Code, the Debtors are hereby authorized to retain A&M as financial advisors to the Debtors, nunc pro tunc to the Petition Date on the terms set forth in the Engagement Letter.
4. A&M will provide such restructuring support services as A&M and the Debtors shall deem appropriate and feasible in order to manage and advise the Debtors in the course of the Chapter 11 Cases, including, but not limited to:
 - (a) interfacing with the Official Committee of Unsecured Creditors (the "*Creditors' Committee*"), Zolfo Cooper (as Cayman Provisional Liquidator), and other creditors regarding the Debtors' operations;
 - (b) reviewing proposed investment activities (investment in and monetization of existing investments and new investments) and presenting the proposed actions to the Creditors Committee;
 - (c) reporting/validating accounting entries of the Debtors, and cash flows between and among Debtors and non-Debtor entities;
 - (d) analyzing substantive consolidation of the Debtors and the provision of testimony in support of the Debtors' position;
 - (e) assisting with the development of the Debtors' business plan and related financial model;

- (f) assisting with the preparation of reporting packages, including
 - i. 4-Week Cash Flow Forecast
 - ii. Monthly Operating Report;
- (g) assisting with the preparation of statements and schedules;
- (h) reporting to Arcapita's Board of Directors, as desired, or directed

by the Debtors' management; and

- (i) rendering such other general business consulting or such other assistance as Debtors' management or counsel may deem necessary, consistent with the role of a financial advisor and the services set forth above to the extent that it would not be duplicative of services provided by other professionals in this proceeding.

5. With the exception of terms relating to the Incentive Fee, the terms of the Engagement Letter, including without limitation, the compensation provisions (other than the Incentive Fee) and the indemnification provisions, as modified by the Application, are reasonable terms and conditions of employment and are hereby approved; *provided*, that notwithstanding the terms of the Engagement Letter, all requests by A&M for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, further*, that in no event shall A&M be indemnified if a court determines by final order that such claim arose out of A&M's own bad faith, self-dealing, breach of fiduciary duty, gross negligence, or willful misconduct.

6. A&M shall file applications for interim (as necessary) and final allowance of compensation and reimbursement of expenses in accordance with the terms of the Engagement Letter, the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code, all applicable Bankruptcy Rules, the Local Rules, any guidelines promulgated by the Office of the United States Trustee, and further orders of the Court. Notwithstanding anything to the contrary contained herein, the Office of the United States Trustee and the Creditors' Committee retain all rights to respond or object to A&M's applications for compensation and reimbursement of expenses on all grounds including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code; and, in the event the U.S. Trustee objects, the Court retains the right to review the interim and final applications pursuant to section 330 of the Bankruptcy Code.

7. Notwithstanding anything to the contrary contained in the Engagement Letter, the Application, or this Order, the Debtors are not authorized to pay to A&M the Incentive Fee or any other completion fee, transaction fee, or success fee of any kind; *provided, however,* that the Debtors or A&M shall be permitted, with the consent of the Creditors' Committee, to apply to the Court at such time that A&M files its application for final allowance of compensation and reimbursement of expenses in the Chapter 11 Cases for amendment of this Order to authorize the Debtors to pay to A&M a success fee, in such amount and on such terms as shall be acceptable to the Committee; *provided, further,* that if there is a change in the scope of services that A&M is required to perform for the Debtors, the Debtors shall be permitted to apply to the Court for amendment of this Order to reflect this change of scope and any changes to A&M's compensation that it may warrant.

8. In the event that A&M seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by A&M for payment of indemnity pursuant to the Engagement Letter, as modified by this Order, the invoices and supporting time records from such attorneys shall be included in A&M's own application (both interim and final) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

9. A&M shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of A&M's counsel other than those incurred in connection with a request of A&M for payment of indemnity.

10. To the extent there is inconsistency among the terms of the Engagement Letter, the Application, and this ~~Interim~~ Order, the terms of this Final Order shall govern.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

Dated: New York, New York
July 13, 2012

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