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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(C), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
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**STATEMENT AND RESERVATION OF RIGHTS OF THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS IN CONNECTION  
WITH THE DEBTORS' MOTION FOR AN ORDER  
AUTHORIZING THE DEBTORS TO LAUNCH THE EUROLOG IPO**

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita") and each of its affiliated debtors in possession in the above-captioned jointly administered chapter 11 cases (collectively, the "Debtors") hereby submits this statement and reservation of rights (the "Statement") with respect to *the Debtors' Motion for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing the Debtors to Launch the EuroLog IPO* [Docket No. 350] (the "Motion") and the proposed form of order attached thereto (the "Order"), and in connection therewith, respectfully states as follows:<sup>1</sup>

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

## STATEMENT

1. The Debtors seek authorization to launch the EuroLog IPO if they decide that this would provide the best chance to monetize their investments in several portfolio companies. In furtherance of that goal, the Debtors seek authority to incur material obligations pursuant to agreements, including the EuroLog IPO Documentation, that have not yet been drafted. Because of the truncated process proposed by the Debtors, the Committee has not been able to carry out its statutory oversight mandate and properly evaluate the proposed EuroLog IPO on behalf of the Debtors' unsecured creditors.<sup>2</sup> The Committee understands the rationale for, and does not object to, the sequenced process by which the Debtors are seeking approval of the EuroLog IPO. It appreciates the Debtors' attempt to reconcile the conflicts between the typically secretive market practices with respect to an initial public offering, and the disclosure requirements and Court supervision imposed by the Bankruptcy Code.<sup>3</sup>

2. However, while the details of the definitive documentation remain undetermined, it is clear that any obligations created thereby will constitute administrative expenses of the Debtors' estates and correspondingly will reduce recoveries to the Debtors' unsecured creditors. Quite appropriately, therefore, the Debtors have sought the Committee's consent with respect to the EuroLog IPO. To date, the Committee has not granted such consent.

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<sup>2</sup> See In re Johns-Manville Corp., 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983) (“[F]iduciary duties [of reorganization committees] are crucial because of the importance of committees. . . . They also provide supervision of the debtor and execute an oversight function in protecting their constituent’s interests. . . . [The] wide and important array of authority [provided to committees] indicat[es] the intent to create a significant and central role for committees in carrying out a reorganization.” (internal citations omitted)).

<sup>3</sup> The alternative would be to seek final approval on the basis of definitive documentation if and when the Debtors decide to go forward with the EuroLog IPO, which may well lead to the Debtors missing the opening of an “ IPO window,” surrendering “first mover” advantage or otherwise failing to maximize value to the Debtors’ estates.

3. Nevertheless, the Committee has agreed to not object to the relief requested in the Motion in exchange for certain important rights relating to the EuroLog IPO. Specifically, the Debtors have agreed that the Committee (along with the Joint Provisional Liquidators of AIHL) will have consent rights with respect to (i) the terms of the final EuroLog IPO Documentation and (ii) the minimum price below which the Debtors will not proceed with the EuroLog IPO, absent further order of this Court. If either the Committee or the JPL decline to consent, the Debtors reserve their rights to seek Court approval, and the Committee reserves its rights to object to any motion seeking such approval.

4. The Debtors agree and understand that the Committee needs to be in a position to make an informed decision as to the EuroLog IPO and, in order to be in such a position, must conduct appropriate due diligence with respect to the proposed EuroLog IPO transaction and available alternatives. The unusual nature of the approval being sought cannot be allowed to interfere with the Committee's fiduciary duties and statutory responsibilities. While the Debtors have provided the Committee's advisors with limited information about the proposed EuroLog IPO transaction, citing the uncertainty surrounding whether the IPO will go forward, the Debtors have declined to provide key information to the Committee. Significant diligence requests remain outstanding. These include, among other things, requests for the following:

- i. a flow of funds analysis showing how the IPO proceeds will flow through the corporate structures and ultimately back to the Debtors' estates;
- ii. the due diligence process undertaken by the Debtors' counsel with respect to AIHL's indemnification obligations;
- iii. details of unspecified commissions and expense reimbursements provided for in the Underwriting Agreement;

- iv. analyses and structure papers related to the EuroLog IPO prepared by Listco's advisors;<sup>4</sup>
- v. specifics of management, performance and administrative fees payable in connection with the EuroLog IPO;
- vi. the nature and status of the Debtors' contingency planning;
- vii. analyses of potential sales of each EuroLog Asset on an individual basis or grouped within the portfolio;
- viii. issues to be addressed if the EuroLog Assets are not monetized, including debt maturities and new money needs;
- ix. management's views of minimum pricing for the EuroLog IPO (including its rationale and supporting information); and
- x. the proposed value allocation of the EuroLog Assets.

5. Notably, the Debtors have not objected to the substance of any of the Committee's diligence requests, just to the need to provide this information at this time. In the course of a chapter 11 case, there may be many instances when the facts of a particular transaction mandate a truncated review period. This is not one of them. The Committee is entitled to review the underlying value and monetization options for these portfolio investments, whether or not now is the perfect time to monetize them. The Debtors' recalcitrance guarantees that the Committee would not have sufficient time to review and analyze this information in an appropriate manner. Accordingly, the Debtors should comply immediately with the Committee's outstanding information requests and

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<sup>4</sup> The Committee notes that certain aspects of the EuroLog IPO transaction as described in the Motion differ from the Committee's understanding of those deal elements based on diligence conducted to date. First, the Motion describes a direct transfer of the EuroLog Assets from the EuroLog Subsidiaries to Listco. Motion at ¶ 3. The Committee understands that the transfers contemplated under the Master Transfer Agreement are in the nature of share transfers of certain EuroLog Subsidiaries that own the EuroLog Assets, rather than direct transfers of the assets themselves. Second, the Motion refers in multiple instances to debt that encumbers the EuroLog Assets, Motion at ¶¶ 10, 11 and 13, and explains that "[a]fter the EuroLog IPO, the debt that currently encumbers the EuroLog Assets will be partially repaid with the IPO proceeds and the remainder will be refinanced and secured by Listco's assets." Motion at ¶ 10. From diligence conducted to date, the Committee understands that none of those debt facilities that will be partially repaid with IPO proceeds are actually secured by all or even a majority of the EuroLog Assets. In addition, the Committee understands that after the EuroLog IPO, the collateral securing those debt facilities will remain the same (and, specifically, the lenders thereunder will not be granted additional security over the remainder of the EuroLog Assets that are not currently their collateral).

assist the Committee in its due diligence. Absent meaningful cooperation, the Committee likely would be unable to support the proposed EuroLog IPO, leaving the Debtors to seek approval over the Committee's objection. In creating the likelihood of unnecessary contested court proceedings, the Debtors risk wasting scarce estate funds and judicial resources.<sup>5</sup>

### **RESERVATION OF RIGHTS**

6. The Committee expressly reserves all of its rights to not approve the form or substance of the EuroLog IPO Documentation and to reject any proposed pricing for the EuroLog IPO that the Committee determines is not in the best interests of the Debtors' unsecured creditors. In the event the Debtors seek Court approval of the EuroLog IPO in circumstances where the Committee has declined to approve the final EuroLog IPO Documentation or the minimum pricing, the Committee expressly reserves its rights to object to any such requested relief on any basis whatsoever.

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<sup>5</sup> From what it currently understands of the proposed transaction, the Committee expects that it will ultimately be able to support the EuroLog IPO. The Committee simply must be given the opportunity to review the proposed transaction and the underlying rationale therefor in sufficient detail to ensure it is in the creditors' best interests.

Dated: New York, New York  
August 8, 2012

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

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