Debtors' Reply Deadline: August 14, 2012 at 5:00 p.m.
Hearing Date: August 16, 2012 at 2:00 p.m.

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet M. Weiss (JM-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

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

DEBTORS' REPLY TO THE COMMITTEE'S STATEMENT AND RESERVATION OF RIGHTS IN CONNECTION WITH THE DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO LAUNCH THE EUROLOG IPO

Arcapita Bank B.S.C.(c) ("***Arcapita Bank***") and certain of its subsidiaries and affiliates, as debtors and debtors in possession, (collectively, the "***Debtors***") hereby submit this reply (the "***Reply***") to the statement and reservation of rights (the "***Statement***") of the Official Committee of Unsecured Creditors (the "***Committee***") appointed in the above-captioned chapter 11 cases (the "***Chapter 11 Cases***") with respect to the Debtors' motion for an order authorizing the Debtors to launch the EuroLog IPO [Docket No. 350] (the "***IPO Motion***").[1] In support of the Reply, the Debtors respectfully represent:

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

REPLY STATEMENT

1. The proposed EuroLog IPO is the single largest monetization transaction the Debtors are presently contemplating. In the sound exercise of their business judgment, the Debtors believe that the EuroLog IPO is likely the best way to maximize the value of the EuroLog Assets for the benefit of all constituencies—including their secured creditor, Standard Chartered Bank, and their unsecured creditors. Significantly, no party has meaningfully challenged the Debtors' judgment in this regard; even the Committee contends that it "expects that it will ultimately be able to support the EuroLog IPO." Statement 5, n.5. However, the value of the EuroLog IPO to the Debtors' estates is largely dependent upon prevailing market conditions at the time the IPO is launched. Should favorable market conditions present themselves, the Debtors must be in a position to capitalize on those conditions and move forward quickly with the EuroLog IPO. At the same time, the Debtors are also aware that favorable market conditions may not materialize and are cognizant of the sizeable costs associated with preparing the definitive documentation implementing the term sheets (described in the IPO Motion as the EuroLog IPO Documentation).

2. To balance the competing concerns of preparedness and frugality, the Debtors adopted a two-stage approach to the EuroLog IPO. Stage one, which has culminated in the filing of the IPO Motion, entailed negotiation of detailed term sheets sufficient to obtain Court approval of the transaction. Approval of the IPO Motion will position the Debtors to act swiftly if the market environment is ripe. Stage two entails finalization of the EuroLog IPO Documentation. This stage is expected to conclude much, much closer to the date that the Debtors anticipate launching the EuroLog IPO and will, almost certainly, be characterized by last minute negotiations and agreements over important, but in all likelihood not economically

material issues. To attempt to avoid the need for the Court to become re-involved, undoubtedly on a relatively expedited basis, late in stage two and the potential impact of such a last minute hearing on the marketing efforts with respect to the EuroLog IPO, the Debtors have proposed that, if the Committee, the JPLs and Standard Chartered Bank—the three parties that have expressed any position with respect to the EuroLog IPO—agree with the form of the EuroLog IPO Documentation, no further Court approval will be necessary to consummate the EuroLog IPO. This two stage strategy is entirely consistent with the Debtors' approach throughout these Chapter 11 Cases to build consensus and minimize the involvement of the Court.[2]

3. Throughout the Chapter 11 Cases, the Debtors have worked assiduously to maximize the value of their assets for the benefit of all of their stakeholders and to keep the Committee and its professionals as informed as possible about the Debtors' proposed value maximizing courses of action for particular assets. The EuroLog IPO continues this approach. Indeed, the Debtors have been actively working for several months on a strategy to monetize the EuroLog Assets. And, consistent with their practice throughout the course of these Chapter 11 Cases, the Debtors provided to the Committee and its professionals a comprehensive report on the Debtors' efforts to maximize the value of these assets within weeks of the Committee's formation.

---

[2] The Statement suggests that "[q]uite appropriately," "the Debtors have sought the Committee's consent with respect to the EuroLog IPO." Statement ¶ 2. Although the Debtors have sought the Committee's support and believe that the EuroLog IPO should be supported by the Committee, the Debtors have not agreed that the Committee, the JPLs or Standard Chartered Bank must necessarily "consent" to the EuroLog IPO. Instead, the Debtors have agreed that if there is no dispute regarding the EuroLog IPO Documentation, no further approval of the Court is necessary to consummate the EuroLog IPO, but that, if such a dispute does exist, there must be a further hearing before this Court to resolve the disagreement. This is not conceding a consent or veto right to any non-Debtor party to the EuroLog IPO; it is merely implementing a procedural mechanic which might potentially avoid a further hearing before the Court.

4. Specifically, beginning in April 2012, the Debtors provided the Committee, thorough its professionals, with numerous documents relating to the EuroLog Assets and the proposed EuroLog IPO. To advance the Committee's learning curve, the Debtors and their professionals conducted multiple teleconferences with the Committee and its professionals to explain the alternatives with respect to the EuroLog Assets and to respond to the Committee's questions and concerns. Following these calls and the Committee's review of documents, the Committee made additional documents requests, and the Debtors and their professionals have timely produced responsive documents on a rolling basis. Against this backdrop, the Committee's assertions that it is in the dark regarding the EuroLog Assets and the proposed IPO ring hollow.

5. The same holds true for the Committee's protestations regarding the deficiencies in the IPO Motion itself. Prior to the filing the IPO Motion, the Debtors provided the Committee with a draft of the IPO Motion and unredacted versions of each of the attachments thereto. The Debtors incorporated each of the Committee's comments to the draft IPO Motion into the filed version.[3]

---

[3] In light of the Committee's active review and comment on the IPO Motion prior to its filing, the Committee's post-hoc hermeneutical attacks on the IPO Motion's description of the IPO sound another hollow bell. For example, the Committee now complains of the IPO Motion's generalized one-paragraph description of the transfer of the EuroLog Assets to Listco—suggesting that the IPO Motion itself should have described the mechanics of the transfer in painstaking detail so as to be abundantly clear that the precise form of the transfer will be a transfer of the shares of entities that own the assets, rather than a direct transfer of the underlying assets themselves. Putting aside the fact that the shares to be transferred are "assets" under any common definition of the term (and the fact that the defined term "EuroLog Assets" in the Motion includes a group of "companies"), the mechanics of the transfers are described in detail in the Master Transfer Agreement Term Sheet that was attached as an exhibit to the IPO Motion—a document the Committee itself helped to negotiate. Similarly, the Committee now complains about the IPO Motion's generalized description of the debt encumbering the EuroLog Assets and the mechanics of how that debt will be repaid, refinanced, and/or reinstated following the EuroLog IPO. While the Debtors

6. Far from the tale the Committee has spun in its objection, the Committee has been an active participant in the EuroLog IPO process, including commenting extensively on the EuroLog IPO term sheets. In this regard, the Committee's professionals have participated in a series of conference calls and meetings, including an in-person meeting in London with the Debtors, their professionals, and Linklaters. During these calls and meetings, the parties discussed the history, purpose, and Debtors' concerns regarding the matters addressed in the EuroLog IPO term sheets and the Debtors responded to the Committee's questions and comments regarding the EuroLog IPO, and the related term sheets. By way of illustration, attached to this Reply as Exhibit A is a summary of the numerous calls and meetings that have occurred between the Committee's professionals and the Debtors' professionals regarding the EuroLog IPO.

7. As agreed with the Committee's professionals, the Committee's initial comments to the EuroLog IPO term sheets were promptly communicated to the underwriters. Subsequent drafts of the EuroLog IPO term sheets led to further comments from the Committee, which were also communicated to the underwriters. As a result of this process, numerous changes were made to the EuroLog IPO term sheets in response to the Committee's comments and concerns. Indeed, before the IPO Motion was filed, Committee counsel observed in an email: "No further comments on the term sheets from Milbank."

8. To minimize the expenditure of additional estate assets until the Debtors have more clarity regarding the receptiveness of the European and U.S. equity markets for the

---

have and will provide the Committee and its professionals with more detailed information about how the debt at non-Debtor levels will be restructured as a result of the EuroLog IPO, the Debtors believe that the description in the IPO Motion is more than sufficient for its purpose.

EuroLog IPO, the actual documents implementing the term sheets have not yet been drafted.[4] The Debtors are committed to discussing these documents with the Committee and seeking Committee input. The Committee cannot plausibly find fault with this approach as the Debtors have specifically agreed that either the Committee must sign off on the final EuroLog IPO Documentation or the Court must approve such documentation after further notice and hearing. In fact, this is the thesis of the IPO Motion which seeks very limited relief—an order of this Court confirming that, so long as the Committee, the JPLs and Standard Chartered Bank (the "***Interested Parties***") are satisfied with the final EuroLog IPO Documentation, no further court approval is necessary for the Debtors to engage in the EuroLog IPO. Because the Debtors believe that, ultimately, the Debtors and the Interested Parties will agree on the terms of the EuroLog IPO Documentation and, hence, that no further involvement of the Bankruptcy Court will be necessary, granting the IPO Motion ensures flexibility to launch the EuroLog IPO when the market conditions are most opportune (the Debtors, obviously, cannot predict when exactly this will be) without undermining the right of the Interested Parties to comment on and object to the final EuroLog IPO Documentation. Indeed, prior to the filing the Committee's Statement with respect to the IPO Motion, the Committee's advisors indicated their agreement with this very approach.

9. Unfortunately, despite paying lip service to the need for cooperation and expeditious drafting and review of relevant documents, the Committee is actually impeding the Debtors' ability to produce the relevant documents and obtain the ability to launch a transaction that will maximize the value of the Eurolog Assets for the benefit of all creditors. Most notably,

[4] Notably, the term sheets are quite detailed and extensive as the parties, including the Committee, endeavored to ensure that every critical issue was covered in the term sheets so that disputes regarding the definitive documents could be avoided, or at least minimized.

the Committee is challenging the entitlement of Linklaters (lead IPO counsel) to overdue fees. Significantly, Linklaters is not retained by a Debtor for these services, and neither the U.S. Trustee nor Standard Chartered Bank nor the JPLs have any objection to the payment of these fees. Predictably, Linklaters' willingness to expend additional efforts into the EuroLog IPO is conditioned on payment of Linklaters' fees for such services. In fact, many of the "[s]ignificant diligence requests" that "remain outstanding" relate to requests for information that were sent to only Linklaters—and, curiously, not to the Debtors or Gibson Dunn. Linklaters has been working to respond to these requests as expeditiously as it can. Linklaters' willingness to respond to these diligence requests from the very party challenging its fees is, in and of itself, quite admirable.

10. Given the Debtors' position that further court approval will be necessary if the Interested Parties are not satisfied with the final EuroLog IPO Documentation, it is nonsensical for the Committee to argue that the Debtors have anything but the utmost interest in making sure that the Interested Parties have absolutely all of the information that they require to evaluate and sign-off on that EuroLog IPO Documentation.[5] Toward this end, the Debtors are working intensively to respond to the Committee's additional information requests. It is worth noting, however, that the Committee's advisors have already had significant discussions with the Debtors and their professionals regarding many of the outstanding items that the Debtors have allegedly been "recalcitrant" to provide. For example, Committee counsel participated in hours of teleconferences related to the negotiation of AIHL's indemnification obligations and

---

[5] Due to the nature of the IPO process and the short window that will likely be available when market conditions are most opportune, as a practical matter, seeking further court approval, even on an emergency basis, late in the IPO process may undermine value. In fact, the Debtors believe this practical consideration will drive all of the parties to a reasonable resolution of issues related to the final EuroLog IPO Documentation as soon as possible.

Committee financial advisors participated in hours of teleconferences with the Debtors' management and restructuring advisors related to the nature and status of the Debtors' contingency planning, the Debtors' analyses of alternatives to the proposed EuroLog IPO (e.g., potential piecemeal sales of the EuroLog Assets), and the timing and restructuring issues that must be addressed if the EuroLog Assets are not monetized through an IPO process. Following these discussions, the Committee's concerns appeared to have been fully satisfied. How else can one explain the comment from Committee counsel: "No further comments on the term sheets from Milbank."

11. As estate fiduciaries, the Debtors are cognizant of their duty to maximize the value of all of their assets. In the context of the EuroLog Assets, the Debtors have sought to accomplish this through the launch of the EuroLog IPO—a transaction that "the Committee expects that it will ultimately be able to support." Statement at 5, n.5. The Debtors have provided, and will continue to provide, as much information as possible to the Committee to garner its full support of the transaction. There is simply no way that the Debtors should lose the opportunity to monetize the EuroLog Assets through a value maximizing IPO because of side-show infighting about deficiencies in the information flow or arguments about the payment of Linklaters' fees. All of the parties, including the Debtors and the Committee, must get beyond the "noise" and complaints and focus their efforts on the real issue here: how to ensure that the EuroLog IPO can be launched and priced in a manner that will maximize the value of the EuroLog Assets—a transaction that will inure to the benefit of all of the Debtors' constituencies.

Dated: New York, New York
August 14, 2012

Respectfully submitted,

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

Exhibit A

Meeting and Teleconference Log

Log of Meetings and Teleconferences

Date	Description
9-May-12	Discuss Initial Presentation (A&M, Arcapita Deal Team, Houlihan, Committee Counsel, Debtors' Counsel, JPL and Counsel)
11-May-12	Follow-up call (A&M, Arcapita Deal Team, Houlihan, Committee Counsel, Debtors' Counsel)
14-May-12	Diligence Call (A&M and Houlihan)
16-May-12	Follow-up Diligence Call (A&M, Arcapita Deal Team, Houlihan)
18-May-12	Follow-up Call (A&M and Houlihan)
24-May-12	Call to Defer IPO (A&M, Debtors' Counsel, Houlihan, Committee Counsel, JPL and Counsel)
10-Jul-12	Meeting/call in London to discuss IPO Term Sheets (A&M, Arcapita Deal Team, Houlihan, Committee Counsel, JPL, Debtors' Counsel)
17-Jul-12	Call to discuss IPO Terms Sheets and status of documentation (Debtors' counsel, JPL Counsel, A&M, Committee Counsel, Houlihan)
22-Jul-12	Follow-up call to discuss IPO Term Sheets (Debtors' Counsel, Committee Counsel, JPL Counsel, Arcapita Deal Team)
26-Jul-12	Follow-up calls to discuss finalization of IPO Term Sheets (Debtors' Counsel, Committee Counsel, JPL Counsel)