

**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

STIPULATED ORDER APPROVING KPMG-UK INDEMNITY

WHEREAS, KPMG LLP¹ and KPMG Audit Plc (together “**KPMG**”) have been retained by Point Park Properties s.r.o. (“**P3**”), a subsidiary of Arcapita Bank B.S.C.(c) (“**Arcapita**”), to complete certain accounting and tax work, including without limitation the preparation of confidential financial and tax due diligence reports dated 31 July 2012, and an audit insights memorandum dated 11 April 2012 (collectively, the “**Reports**”) in connection with an initial public offering of shares in a new entity with ownership of certain warehousing assets located throughout Europe (the “**EuroLog IPO**”);

WHEREAS, on March 19, 2012, Arcapita and five of its affiliates (collectively, the “**Initial Debtors**”) commenced cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and on April 30, 2012, Falcon Gas Storage Co., Inc. (collectively, with the Initial Debtors, the “**Debtors**”) commenced a case under chapter 11 of the Bankruptcy Code (along with the cases of the Initial Debtors, the “**Chapter 11 Cases**”).

¹ The accounting and tax work that KPMG LLP a United Kingdom limited liability partnership, is performing on behalf of P3 (a non-Debtor) described herein (the “**P3 Engagement**”) is separate and apart from the work KPMG LLP (UK) and any of its affiliates are performing on behalf of the Debtors (as defined below) in the Chapter 11 Cases (as defined below) pursuant to the *Order pursuant to Sections 327(a) and 330 of the Bankruptcy Code Authorizing Certain Debtors To Retain and Employ KPMG LLP [UK] as Valuation Advisor Nunc Pro Tunc to the Petition Date* (Docket No. 335) (together, the “**Chapter 11 Retention Order**”). As P3 is a non-Debtor, KPMG LLP (UK) will not seek reimbursement for its fees and expenses incurred in connection with the P3 Engagement in any fee application filed in respect of the Chapter 11 Retention Order.

WHEREAS, on July 26, 2012, the Debtors filed 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) seeking authorization to launch the EuroLog IPO (the “*EuroLog Motion*”);

WHEREAS the Bankruptcy Court for the Southern District of New York (the “*Court*”) approved the EuroLog Motion at the hearing held on August 16, 2012;

WHEREAS in connection with the Debtors’ prosecution of the EuroLog IPO, the parties agree that it is necessary to share the Reports prepared by KPMG with the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “*Committee*”), the Joint Provisional Liquidators of Arcapita Investment Holdings Limited (“*AIHL*”) and certain other parties in interest (collectively, including the Committee, the “*Additional Recipients*”);

WHEREAS, the Reports were not planned or prepared in contemplation, or for the purpose, of dissemination to or reliance upon by the Additional Recipients and KPMG will not allow the Reports to be disseminated to the Additional Recipients without the Debtors’ agreement to indemnify KPMG in the event it suffers any liability as a result of the dissemination of the Reports to the Additional Recipients;

WHEREAS, in connection with the foregoing, the parties hereto seek to provide KPMG with a limited indemnity to the extent set forth herein and in addition to any indemnity provided by P3 pursuant to the terms of KPMG’s employment with P3; and,

WHEREAS, the Debtors and the Committee, through their counsel, and KPMG, hereby stipulate to and submit the following Stipulated Order for the Court’s approval.

It is hereby **ORDERED** as follows:

1. Arcapita, Arcapita LT Holdings Limited (“*ALTH*”), and AIHL (collectively with Arcapita and ALTH, the “*Indemnifying Persons*”) shall defend, indemnify and hold harmless KPMG and its affiliates and subsidiaries, and each of their partners, directors, members, employees and agents and any person or organization associated with KPMG through membership of the Swiss co-operative of professional service firms to which KPMG belongs and their partners, directors, members, employees and agents, (KPMG and each such other person being an “*Indemnified Person*”) from and against any losses, claims, damages or liabilities related to arising out of or in connection with KPMG’s engagements in connection with the EuroLog IPO, including the analyses and implementation thereof and the sharing of KPMG’s Reports with the Additional Recipients, (including fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing or defending any action, claim, suit, investigation or proceeding related to, arising out of or in connection with the engagements, whether or not pending or threatened and whether or not any Indemnified Person is a party; *provided, however*, the Indemnifying Persons will not be responsible for any losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the bad faith or gross negligence of any Indemnified Person, and any compensation due to KPMG in connection with the foregoing shall be treated as an administrative expense of the Indemnifying Persons’ estates in the Chapter 11 Cases. If any claim is made against KPMG, and the Indemnifying Persons have recompensed KPMG in full and final settlement for any claim, liability, expense or loss giving rise to any right of indemnification, then the Indemnifying Persons shall be subrogated to any rights of recovery from third parties with respect to such claim, liability, expense or loss (the “*Indemnity*”).

2. With respect to the Indemnity:

- (a) All requests of Indemnified Persons for payment of the Indemnity 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 this Stipulated Order and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, however*, that in no event shall any Indemnified Person be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.
- (b) In the event that any Indemnified Party seeks reimbursement from the Indemnifying Persons for reasonable attorneys' fees in connection with a request by such Indemnified Person for payment of the Indemnity, the invoices and supporting time records from such attorneys shall be included in KPMG's own application for indemnification, to the extent there is one, (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.
- (c) In no event shall any Indemnified Person be indemnified if the Indemnifying Persons or representatives of their estates assert a claim for, and a court determines by final order that such claim arose out of, any Indemnified Person's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct;

3. This Stipulated Order may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

STIPULATED AND AGREED:

Dated: August [], 2012

GIBSON DUNN & CRUTCHER LLP

/s/ Craig H. Millet
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet M. Weiss (JW-5460)
Matthew K. Kelsey (MK-3137)
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

*Attorneys for the Debtors And Debtors In
Possession*

**MILBANK, TWEED, HADLEY &
McCLOY LLP**

/s/ Evan R. Fleck
Dennis F. Dunne
Abhilash M. Raval
Evan R. Fleck
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

*Attorneys for the Official Committee of
Unsecured Creditors*

KPMG LLP

/s/ Andy Pyle
Andy Pyle, Partner
15 Canada Square
London
E14 5GL
United Kingdom
Telephone: +44 (20) 7311 1000
Facsimile: +44 (20) 7311 6482

KPMG Audit Plc

/s/ Andy Pyle
Andy Pyle, Director of Transaction Services
15 Canada Square
London
E14 5GL
United Kingdom
Telephone: +44 (20) 7311 1000
Facsimile: +44 (20) 7311 6482

SO ORDERED THIS 25th DAY OF SEPTEMBER, 2012

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