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Proposed Attorneys for the Debtors  
and Debtors in Possession

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

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<b>IN RE:</b>	:	<b>Chapter 11</b>
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<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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**DEBTORS' MOTION FOR ORDER AUTHORIZING PARTIES TO  
FILE UNDER SEAL NAMES OF THE DEBTORS' CUSTOMERS**

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*"), submit this motion (the "*Motion*") for an order pursuant to section 107(b) of title 11 of the United States Code (the "*Bankruptcy Code*")<sup>1</sup> and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") authorizing the Debtors and other parties involved in these cases filed under chapter 11 of the Bankruptcy Code ("*Chapter 11 Cases*") to: (a) redact the names of the entities that have made investments with the Debtors, which constitute the Debtors' customers ("*Investors*") in disclosures, applications, motions, service lists and other pleadings (collectively,

<sup>1</sup> All statutory references are to the Bankruptcy Code unless otherwise specified.

“*Disclosures*”) filed publicly with the Court; and (b) file unredacted copies of such Disclosures with the Court under seal.

### **JURISDICTION**

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

2. On March 19, 2012 (the “*Petition Date*”), each of the Debtors commenced these Chapter 11 Cases. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in these Chapter 11 Cases. No official committee has yet been appointed by the Office of the United States Trustee.

3. Founded in 1996, Arcapita is a leading global manager of Shari’ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain. In addition to its Bahrain headquarters, the Arcapita Group, together with the other Debtors and their non-Debtor Subsidiaries, has offices in Atlanta, London, Hong Kong, and Singapore in addition to its Bahrain headquarters. The Arcapita Group’s principal activities include investing for its own accounts and providing investment opportunities to third-party investors in conformity with Islamic Shari’ah rules and principles. The Arcapita Group also derives revenue from managing assets for its third party investors.

4. The Arcapita Group has approximately \$7 billion in assets currently under management. As of the Petition Date, on a consolidated basis, the Arcapita Group owns assets valued at approximately \$3.06 billion<sup>2</sup> and has liabilities of approximately \$2.55 billion. Approximately \$1.1 billion of the Debtors' prepetition liabilities are comprised of that certain murabaha, Shari'ah-compliant syndicated facility, issued on March 28, 2007 and maturing on March 28, 2012.<sup>3</sup>

### **RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of an order pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, substantially in the form annexed hereto as *Exhibit A*, authorizing the Debtors and other parties involved in these Chapter 11 Cases (including but not limited to professionals filing applications with the Court seeking to be retained by the Debtors pursuant to sections 327 and/or 328 of the Bankruptcy Code) to: (a) redact the Investors' names from disclosures, applications, motions, service lists and other pleadings filed publicly with the Court; and (b) file unredacted copies of such Disclosures with the Court under seal.

### **BASIS FOR RELIEF REQUESTED**

6. Section 107(b) provides, in relevant part, as follows: "On request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . ." 11 U.S.C. § 107(b).

7. Bankruptcy Rule 9018 provides, in relevant part, as follows:

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<sup>2</sup> This includes Arcapita's beneficial interest in assets under management.

<sup>3</sup> A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions and in Accordance with Local Rule 1007-2 [Dkt. No. 6] (the "*Thompson Declaration*").

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information ... contained in any paper filed in a case under the Code....

Fed. R. Bankr. P. 9018.

8. The Second Circuit has held that section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). In addition, the Second Circuit has held that a party seeking to seal information is required to show only that the information is confidential and commercial. For purposes of section 107(b), commercial information includes “information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *Id.* (citing *Ad Hoc Protective Comm. for 10 1/2% Debenture Holders v. Itel Corp. (In re Itel Corp.)*, 17 B.R. 942, 944 (9th Cir. B.A.P. 1982)). No showing of “good cause” is necessary, although as set forth below, the Debtors here have demonstrated that good cause does exist. *Id.*

9. By this Motion, the Debtors seek to limit public access to a *very narrow* set of information: the names of the Debtors’ Investors (listed as “customers” on the proposed professionals’ conflict disclosures). At its very core, the Arcapita Group is an investment bank which provides third party customers the opportunity to invest and co-invest with the Arcapita Group in conformity with Islamic Shari’ah rules and principles. Accordingly, like any investment bank or private equity fund, Arcapita’s greatest resources are its contacts with potential third party Investors, along with its reputation as a respected institution for Shari’ah compliant investments. Arcapita’s business of seeking new investment opportunities assumes

continuing participation by investors.

10. Public disclosure of the Investors' names would damage the Debtors' businesses by enabling the Debtors' competitors to "poach" the Investors, particularly in light of the Debtors' recent entry into Chapter 11. As such, the Investors' names are "confidential" and "commercial" in nature, which alone justifies their protection. *Id.* at 28. Proprietary customer/investor information is sensitive in the finance industry and is not typically made publicly available.

11. Several courts have recognized the propriety of preserving the confidentiality of customer information by authorizing such information to be filed under seal under similar circumstances and for the same purposes set forth in this Motion. *See, e.g., In re A.G. Fin. Serv. Ctr., Inc.*, 395 F.3d 410, 415-16 (7th Cir. 2005) (affirming bankruptcy court's refusal to order the debtor to turn over its customer list because the list constituted "confidential commercial information" pursuant to Bankruptcy Code section 107(b)(1) and Bankruptcy Rule 9018, and "[h]anding the list over for free would have diminished the value of the estate"); *In re Nortel Networks, Inc.*, 2010 Bankr. LEXIS 5218, at \*10 (Bankr. D. Del. Dec. 1, 2010) ("The Court recognizes that the list of Customer Contracts (as defined in the Motion) and affidavits of service that identify the Debtors' customers constitute confidential commercial information, and therefore authorizes that any such lists and affidavits to be filed in connection with the Motion and the procedures approved therein may be filed under seal."); *In re Nunn*, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985) (protecting a creditor's customer list under Bankruptcy Code section 107(b) because "to allow a competitor access to [the creditor's] customer list would obviously have an adverse effect on [the creditor]").

12. The Debtors believe that the Investors' names are only relevant insofar as the

Investors constitute “interested parties” in these Chapter 11 Cases, and various professionals seeking to be retained by the Debtors in these Chapter 11 Cases must disclose any potential conflicts of interest with regard to such interested parties. Therefore, public disclosure of the Investors’ names is not necessary to protect the interests of the public. Furthermore, any party with a compelling interest in learning the Investors’ names may request consent from the Debtors or request a further order from this Court.

13. In sum, the relief sought in this Motion is necessary to protect the confidential commercial information of the Debtors and will not impair the ability of this Court to protect the public interest.

**NO PRIOR REQUEST**

14. No previous motion for the relief sought in this Motion has been made to this or any other Court.

**NOTICE**

15. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.), (ii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l., (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC and (iv) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors’ notice and claims agent, GCG, Inc., at

[www.gcinc.com/cases/arcapita](http://www.gcinc.com/cases/arcapita).

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 3, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

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**PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**



HEARING DATE AND TIME: April 17, 2012 at 11:00 a.m. (Eastern Time)

OBJECTION DEADLINE: April 10, 2012 at 12:00 p.m. (Eastern Time)

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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>
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<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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**NOTICE OF HEARING ON DEBTORS' MOTION FOR ORDER  
AUTHORIZING PARTIES TO FILE UNDER SEAL  
NAMES OF THE DEBTORS' CUSTOMERS**

PLEASE TAKE NOTICE that a hearing on the annexed motion, dated April 3, 2012 (the "*Motion*") of Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the "*Bankruptcy Court*"), One Bowling Green, New York, New York, 10004, on **April 17, 2012 at 11:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the "*Objections*") shall be filed electronically with the Court on the docket of *In re Arcapita Bank*

*B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the “*Docket*”), pursuant to the Case Management Procedures approved by this Court<sup>1</sup> and the Court's General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court's case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format (“PDF”), Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) proposed counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq. and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (iii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l.; and (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC so as to be received no later than **April 10, 2012 at 12:00 p.m. (Eastern Time)** (the “*Objection Deadline*”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the

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<sup>1</sup> See Order (A) Waiving the Requirement That Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of a Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures [Docket No. 21].

Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York  
April 3, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Janet M. Weiss (JW-5460)  
Matthew K. Kelsey (MK-3137)  
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**PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**

**EXHIBIT A**

**Proposed Order**

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

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IN RE: : **Chapter 11**  
ARCAPITA BANK B.S.C.(C), *et al.*, : **Case No. 12-11076 (SHL)**  
Debtors. : **Jointly Administered**  
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**ORDER GRANTING DEBTORS’ MOTION FOR ORDER AUTHORIZING PARTIES  
TO FILE UNDER SEAL NAMES OF THE DEBTORS’ CUSTOMERS**

Upon consideration of the motion (the “*Motion*”)<sup>1</sup> of Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an order pursuant to Bankruptcy Code § 107 and Bankruptcy Rule 9018, authorizing the Debtors and other parties involved in these Chapter 11 Cases (including but not limited to professionals filing applications with the Court seeking to be retained by the Debtors pursuant to sections 327 and/or 328 of the Bankruptcy Code) to redact the names of the Debtors’ customers (“*Investors*,” or if singular, “*Investor*”) in disclosures, applications, motions, service lists and other pleadings (collectively, “*Disclosures*”) publicly filed with this Court, and file such Disclosures with this Court under seal; it appearing that the relief requested in the Motion is appropriate in the context of these cases and in the best interests of the Debtors and their respective estates; the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court

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

(the “*Hearing*”); and the Court having determined that the legal and factual bases set forth in the Motion 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 approved to the extent set forth herein.
2. Pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors and any other party involved in these Chapter 11 cases may redact the name of any Investor in any disclosures, applications, motions, service lists and other pleadings (collectively, “*Disclosure*”) that are publicly filed with this Court in these Chapter 11 Cases (hereinafter, a “*Redacted Disclosure*”), and serve such Redacted Disclosure on all parties entitled to notice thereof under the Bankruptcy Code, the Bankruptcy Rules or any other applicable order.
3. The clerk of the Bankruptcy Court shall accept for filing under seal an unredacted copy of any Disclosure that is publicly filed in redacted form pursuant to this Order (hereinafter, an “*Unredacted Disclosure*”).
4. The Unredacted Disclosure shall be available to the Court, but otherwise shall remain under seal and may not be unsealed until and unless authorized by an order of the Court.
5. The Debtors shall serve a copy of any Unredacted Disclosure, permitted pursuant to this Order, on the United States Trustee for the Southern District of New York (“*United States Trustee*”).
6. The Debtors shall provide a copy of an Unredacted Disclosure as required by an order of this Court or other Court of competent jurisdiction.
7. This Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York  
\_\_\_\_\_, 2012

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE