Hearing Date: October 9, 2012 at 2:00 p.m. (prevailing Eastern Time)

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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 IN SUPPORT OF SECOND MOTION FOR ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES

Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession, (collectively, the "***Debtors***") hereby submit this reply (the "***Reply***") to the Ad Hoc Group's Objection to *Debtors' Second Motion for Order Extending the Debtors' Exclusive Periods to File a Plan or Plans of Reorganization and To Solicit Acceptances* [Docket No. 509] (the "***Exclusivity Extension Motion***").[1]

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

THE AD HOC GROUP'S OBJECTION IS BASED ON NOTHING BUT FALSE AND UNSUPPORTED ASSUMPTIONS

The so called "Ad Hoc Group" of creditors consisting of Taconic Capital Advisors LP, York Capital Management Global Advisors, LLC and Silver Point Capital LP ("***Silver Point***") (each of whom remain restricted) have only recently retained counsel who have themselves only recently gained access to information as to the background of these bankruptcy cases, the progress made to date and the analyses and valuations performed thus far. Based on that very limited involvement – and, notably, without being able to discuss that information with the Ad Hoc Group members themselves so that they can remain unrestricted and free to trade their debt holdings – counsel for the Ad Hoc Group has filed an opposition to the modest extension of the Exclusive Periods requested by the Debtors.

By taking illogical leaps from the Debtors' statements in the Motion and in stark contrast to the testimony of the Debtors' advisor Rothschild -- and without providing any evidence of its own – the Ad Hoc Group's opposition is based on their unsupported statements that these cases are not really complex and that their irrational conclusion that, because of work done so far, the Debtors are ready to file a properly documented plan by October 15, 2012, and without further negotiations with stakeholders. Based on these unsupported contentions, the Ad Hoc Group claims that, despite the progress made to date, within six days of the hearing on this Motion, the Court should require the Debtors to file a plan that would be the practical equivalent of a "place holder" and then negotiate the terms thereafter to obtain a consensual resolution of any confirmation issues. Opp. at p. 3, ¶ 2. The Ad Hoc Group simply assumes without any support whatsoever that the filing a premature plan will cause an earlier exit from chapter 11, and that an early exit will save cost and funding requirements.

The Ad Hoc Group's objection reads like a book report on a novel they haven't yet read. Indeed, the arguments made evince a profound lack of understanding of the various issues confronting the Debtors or at least a lack of sincerity and, if countenanced by the Court, would result in the very thing that the Ad Hoc Group seeks to avoid: even more costly delay by setting the table for endless litigation among competing creditor constituencies with respect to allocation of distributable value. As the only objecting party, perhaps the Ad Hoc Group simply felt the need to signal their entry into the case by barking at the Moon.

For these reasons, and also the agreement reached between the Committee and Debtors as more fully described below, the Court should overrule the Ad Hoc Group's objection and grant the Exclusivity Extension Motion.

A. The Undeniable Complexity of These Cases Is Evident From the Record and the Ad Hoc Group Cannot Change that by Simply Declaring to the Contrary

The Ad Hoc Group's unsupported assertion that the cases are not truly complex only evidences their recent entry into these cases and their woefully incomplete understanding of the Debtors, their business, the diverse claims asserted and the cross border issues involved. It also shows that they have had little involvement with the JPLs and that they do not understand the need to coordinate matters with the Cayman proceedings. Finally, the Ad Hoc Groups' bald assertion contradicts the record in these cases and the uncontroverted testimony offered by the Debtors' advisors in support of the Motion.

The only "support" offered for their statement that these cases are not complex is the Ad Hoc Group's misimpression that the Debtors are not operating companies, that they only "invested money" and that they do not buy, sell, or service anything. Opp. p. 6, ¶ 10. First, the Debtors through their subsidiaries are indeed operating companies with numerous employees, daily activities, contractual management obligations for which they earn management fees, and

pay payroll, maintain offices, etc. *See*, *e.g.*, *Debtors' Motion for an Order Pursuant to Sections 363(B) and 503(C) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims* [Docket No. 205]; and *Supplement thereto* [Docket No. 273]; *Eighth Interim Order (A) Authorizing Debtors to (I) Continue Use of Existing Cash Management System, Bank Accounts and Business Forms and (II) Continue Ordinary Course Intercompany Transactions; etc. and (B) Granting an Extension of the Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code* [Docket No. 472]*; and prior orders* [*See, e.g.,* Docket No. 22, 62, 86, 133, 198 & 310.

Second, whether the Debtors are operating or not is not pertinent to whether these cases present complex issues requiring time to resolve and more than six days to document a plan and disclosure statement.

Third, a finding at this stage on whether these cases are truly complex or not does not warrant forcing the Debtors to file a plan and disclosure statement in six days or, alternately, have exclusivity expire and have the entire estate suffer the chaos and costs of the free-for-all that would then result.

B. The Debtors Cannot Document a Plan without the Extension Requested in the Exclusivity Extension Motion.

Based only on utter speculation and illogical leaps from the Debtors' statements in the Exclusivity Extension Motion that the groundwork has been done to now allow the Debtors to move ahead and document a "toggle" plan during the brief extension requested, the Ad Hoc Group makes the quantum leap that the Exclusivity Extension Motion should be denied because the Debtors have somehow admitted that the Debtors are ready *right now* to file the complex documentation comprising a plan and disclosure statement and without any further discussions with the many diverse stakeholders, including the JPLs. The false and unsupported statement of

the Ad Hoc Group as to the Debtors' ability to file a plan by October 15 is contradicted by the uncontroverted testimony of the Debtors' respected advisor Rothschild, who has testified it just cannot be done and that the additional time is required to negotiate, resolve issues and document a proper plan and disclosure statement.

Even without the further negotiations essential to a successful plan, moving from the structural models and analyses performed thus far to the completion of the many complex documents that will comprise the plan and disclosure statement, and the numerous ancillary documents required, will take considerable efforts and time and, hence, the reason for the Exclusivity Extension Motion. This task is made more complex by the need to coordinate the process with the Cayman proceedings, any Cayman "scheme" to be proposed under Cayman law and the necessity of allowing for Cayman validation orders. The Debtors simply cannot accomplish these tasks by October 15, 2012, especially while completing crucial negotiations as to the EuroLog IPO and the procurement of postpetition financing. Since preparing a plan in six days is impossible, the Ad Hoc Group essentially wants exclusivity to expire with no plan on file.

C. Filing a Premature Plan will Cause, Rather than Prevent, a Waste of Time and Money.

Even if plan documentation could somehow be completed by October 15, as the Ad Hoc Group assumes, filing such a plan and disclosure statement would not expedite matters or save costs. To the contrary, doing so would lead to greater delays and even greater costs than proceeding as the Debtors request in the Exclusivity Extension Motion. Any premature "place holder" plan would be a wasted effort, as it then would require heavy revision and numerous amendments resulting in added delays and extensive additional costs.

To get to the filing of a legitimately confirmable plan, much remains to be negotiated, including the relative distribution of estate assets between Arcapita Bank and AIHL creditors and the treatment of complex and sizeable intercompany claims made difficult by the Debtors' complex capital structure and the diverse makeup of creditors as to the separate Arcapita estates. Even if the Debtors could somehow prepare plan documentation by October 15, the Debtors could only guess as to how to resolve the competing interests of the creditors of AIHL and Arcapita Bank without any meaningful negotiations with the Committee, the JPLs or the creditors themselves.

Indeed, it is in the best interests of all creditor constituencies for the Debtors to try to reach a consensual chapter 11 plan that will be furthered by negotiating these issues *before* filing a plan and, thereby, the wasted time and money in filing a premature plan and negotiating later leading to a hotly-contested confirmation battle. The approach proposed by the Debtors is quite reasonable and appropriate and is certainly quite the opposite from using the requested extension only to allegedly hold creditors hostage as argued by the Ad Hoc Group.

D. Filing a Stand Alone Plan by October 15 Would Not Result in a Reduction of the Funds Required by the Debtors.

The Ad Hoc Group blithely asserts – without any evidence or foundation – that abandoning a "new money" plan (based on new equity investment) and proceeding immediately with the "stand alone" plan (based on a controlled wind-down of the Debtors' investments) will save costs and will reduce the amount of postpetition financing needed to fund the Debtors through the course of the cases. The Ad Hoc Group reaches this unsupportable conclusion based on a number of false assumptions and inapposite arguments.

At the outset, this argument is based on the false premises that (1) filing a plan prematurely on October 15 will, in fact, result in the Debtors' earlier exit from these chapter 11

cases and, (2) because of the earlier exit, a smaller postpetition financing facility will suffice. As shown above, however, a hastily filed plan will require substantial amendment – and possibly protracted litigation – which will eliminate any time saved and will increase costs by causing waste and a duplication of effort. Because time will not be saved, this alone negates the Ad Hoc Groups' argument that the liquidity needs of the Debtors will be less if the Motion is denied.

In any event, the Ad Hoc Groups' attack as to the appropriate amount of the postpetition financing facility and the use of those funds is a separate issue and is a red herring as it pertains to the Exclusivity Extension Motion. Whatever the proper amount of the postpetition financing facility, it will not be reduced if denying the Exclusivity Extension Motion does not truly result in the Debtors' earlier exit from the chapter 11 cases or the amount of liquidity needed by the Debtors post-emergence.

Even assuming the denial of the Debtors' Motion would somehow shorten the bankruptcy cases, the Ad Hoc Group's unsupported conjecture that the Debtors' funding needs would then be less is still false. Based upon the postpetition financing budget and the analysis of Alvarez & Marsal (as shown in connection with the pending DIP Commitment Letter Approval Motion) at the current run rates, ending the case 30 days earlier would result only in the savings of restructuring professional fees of approximately $5.2 million, *assuming* this savings is not otherwise consumed in earlier months as result of additional work needed to meet an expedited schedule or spent in amending a premature plan. The other costs to be incurred (SG&A, deal funding, restructuring costs, etc.) are not materially affected by an earlier exit, and the projected funding will be needed no matter whether it comes due pre or post confirmation. In a "stand alone" plan, the short term liquidity requirements to be met by any postpetition financing facility are even *greater* as compared to a "new money" plan due to severance costs and other significant

non-recurring wind-down costs that will be incurred before any liquidity is generated by asset sales to meet them.

E. The Extension of the Exclusive Periods Requested is Unrelated to Time Allegedly Needed to Seek New Equity Capital.

The Ad Hoc Group opposes the Debtors' Motion by concocting its own straw man arguments and by then opposing them. In the midst of arguing that these chapter 11 cases are not truly complex, the Ad Hoc Group suddenly shifts to arguing that the Motion should be denied because the basis of the Exclusivity Extension Motion is that the Debtors need more time "to try and raise money, which they have been trying to do for months." Falsely assuming that this is the only basis for an exclusivity extension, the Ad Hoc Group then asserts that the Exclusivity Extension Motion should be denied by arguing against the contentions that the Ad Hoc Group alone raised. Opp. at p. 6, ¶ 10. However, the Debtors have not argued that the exclusivity extension requested is warranted because of the need for more time to "raise money," the Debtors' advisor Homer Parkhill provides no such testimony and any finding (even if made) as to whether the Debtors need or should be allowed additional time to raise capital has no impact on the arguments actually made by the Debtors in support of the Exclusivity Extension Motion. Extension or no extension, the Debtors will have adequate time to "try and raise money." But, this is not why the extension is required.

The Ad Hoc Groups' straw man argument and imagined perils are equally without basis as reflected by the limited 60-day extension of the Exclusive Periods requested by the Debtors, the Debtors' agreement that it will seek no further extensions of the Exclusive Filing Period and the Debtors' agreement that it will file a "toggle" plan providing for an automatic switch to the "stand alone" plan if the "new money" plan cannot be funded or confirmed. These provisions proposed by the Debtors in good faith from the outset -- rather than asking 120 days to allow

room to negotiate down as commonly done -- provide a reasonable balance between allowing the Debtor the appropriate time to negotiate and confirm a plan while at the same time assuring a definite end-point to the process.

F. The Ad Hoc Groups' References to the Status of the DIP Facility Negotiations is Totally Irrelevant and Wholly Inappropriate.

The Ad Hoc Groups' unsupported arguments as to the implications of the alleged "difficulty's the Debtors are having attempting to raise a $150 million DIP Facility" are false, unsupported by any evidence, utterly speculative, do not relate to the ability of the Debtors to propose a "new money" plan, and are simply inappropriate. This reference to the proposed postpetition financing (the "***DIP Facility***") again demonstrates the Ad Hoc Groups' misunderstanding of the current state of negotiations and the issues involved, including issues surrounding the pending IPO and the claims of secured creditor Standard Chartered Bank. It also shows the lengths to which the Ad Hoc Group will go to place unsupported and inflammatory statements before the Court that have no bearing on the Motion.

These glib statements by the Ad Hoc Group as to the status of the postpetition financing is even more perplexing since Ad Hoc Group member Silver Point wearing a different hat is the proposed lender in proposed DIP Facility now in negotiation. Silver Point, as the prospective postpetition financing provider, knows the open issues do not relate in any way to the plan process and do not support the allegations of the Ad Hoc Group. Silver Point cannot with one hat participate as the prospective DIP Facility provider and then, wearing the hat of a member of the Ad Hoc Group, use the pending DIP Facility negotiations as a basis to object to the Exclusivity Extension Motion.

G. The Agreement Reached Between the Debtors and the Committee Resolves Any Remaining Issues the Ad Hoc Group May Have With the Extension of the Exclusive Periods.

The Debtors are moving ahead as fast as possible to document their plan and disclosure statement and to obtain commitments as to a "new money" infusion. Even though unsupported, the Debtors wish to get past any arguments that, if the Motion is granted, the Debtors will only "waste time" pursuing a "new money" plan. Therefore, the Debtors and the Committee struck an agreement reached in principle prior to the filing of the Ad Hoc Group's objection and of which the Ad Hoc Group was fully aware (yet they still objected.) The material portions of the agreement reached with the Committee that are relevant to the objection filed by the Ad Hoc Group are as follows:

1. In pursuing new equity capital, the Debtors must by November 1, 2012, have "new money" equity commitments of at least $250 million, represented by funds which shall have been deposited into escrow in New York or by the posting of an irrevocable letter of credit from a money center bank located in New York or London (or other banks mutually acceptable to both the Debtors and the Committee) in the name of one or more of the Debtors. (The "new money" deposits and letters of credit shall be subject to the terms of a Commitment Letter or other agreement setting forth conditions precedent to the use and application of the money.)

2. By November 1, 2012, the Debtors shall have entered into an agreement with the Committee (which reflects the consent of the providers of proposed "new money" equity deposited in escrow as of November 1 2012), that at least 75% of the funds deposited into escrow or by letter of credit by November 1, 2012 will be earmarked for distribution to the Debtors' prepetition unsecured creditors holding allowed claims under a "new money" chapter 11 plan.

3. If the Debtors fail to satisfy either of the preceding two conditions (or to obtain Committee consent otherwise), commencing by no later than November 1, 2012, the Debtors will immediately and exclusively seek to negotiate with their creditors a chapter 11 plan contemplating an orderly wind-down of their businesses and assets.

4. In addition to discussing a "new money" plan, the Debtors will immediately begin good faith discussions with the Committee and other parties in interest regarding a plan that provides for an orderly wind-down of their businesses and assets.

5. As provided in the Exclusivity Extension Motion, if the Debtors have not filed a plan of reorganization by December 15, 2012, the Debtors' exclusive right to file a plan will expire and the Debtors will not seek a further extension of the Exclusive Filing Period. However, if the Debtors file a plan by December 15, 2012, they reserve the right to seek further extensions of the Exclusive Solicitation Period.

This agreement, coupled with the Debtors' agreement from the outset that it will not seek a further extension of the Exclusive Filing Period beyond the 60 days requested, completely and conclusively undermines the Ad Hoc Group's objection.

Dated: New York, New York
October 4, 2012

Respectfully submitted,

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