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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>
	:	
<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' *EX PARTE* MOTION FOR ORDER  
SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE  
DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, AUTHORIZING AND  
APPROVING THE SETTLEMENT WITH STANDARD CHARTERED BANK**

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*"), submit this motion (the "*Motion*") for entry of an order substantially in the form annexed hereto as Exhibit A pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") and Rule 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "*Local Rules*") shortening the time for notice of the hearing to consider the Debtors' *Motion for Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with*

*Standard Chartered Bank* (the “**SCB Settlement Motion**”), filed concurrently herewith and incorporated by reference.<sup>1</sup> In support of the Motion, the Debtors respectfully represent:

## **BACKGROUND**

### **A. General Background**

1. On March 19, 2012 and April 30, 2012, Arcapita and certain of its affiliates commenced cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). 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 the Chapter 11 Cases.

2. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “**Committee**”) [Docket. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

### **B. SCB Settlement**

3. Pursuant to the SCB Settlement Motion, the Debtors are seeking Court authority to enter into a settlement (the “**Settlement**”) with Standard Chartered Bank (“**SCB**”) in accordance with the terms identified in the term sheet (“**Settlement Term Sheet**”) annexed to the SCB Settlement Motion as Exhibit B.

4. SCB is the Debtors’ only material secured creditor. The Debtors are on the cusp of consummating two transactions that implicate SCB’s collateral—namely, launch of

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

the EuroLog IPO and entry into a debtor-in-possession financing facility. Each of these transactions will provide enormous benefits to the Debtors' estates; however, neither transaction can be consummated without either securing SCB's consent or litigating with SCB regarding SCB's rights in the affected collateral. Due to the importance of the proposed transactions to the Debtors' estates, the Debtors, the Committee, the Joint Provisional Liquidators of Debtor Arcapita Investment Holdings Limited (the "*JPLs*"), and SCB all engaged in extensive, hard-fought negotiations to reach a resolution of many outstanding issues with SCB so that these transactions can be consummated with SCB's consent. The Settlement that the Debtors are asking the Court to approve is the result of those negotiations and has been executed by each of the Debtors, the Committee, the JPLs, and SCB.

5. One of the express conditions to the settlement imposed by SCB was that the Settlement be approved by the Court on or before **October 19, 2012**.

#### **JURISDICTION AND VENUE**

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

#### **RELIEF REQUESTED**

7. By this Motion, the Debtors request that the Court enter an order (a) shortening the notice period for a hearing on the SCB Settlement Motion such that it may be heard by the Court as soon as practicable, and (b) requiring that objections to the SCB Settlement Motion, if any, be filed and served so that they are received no later than two business days prior to the hearing date at 4:00 p.m.

**BASIS FOR RELIEF**

8. Bankruptcy Rule 2002(a)(3) requires a debtor to provide 21-days' notice by mail of a motion seeking approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Bankruptcy Rule 4001(d) unless the court, for cause shown, shortens the notice period required for a hearing. Fed. R. Bankr. P. 2002(a)(3). Bankruptcy Rule 9006(c)(1) and Local Rule 9006-1(b) authorize the Court, for cause shown, to reduce the notice period required for a hearing. Fed. R. Bankr. P. 9006(c)(1); Local Rules, at 9006-1(b).

9. Pursuant to the SCB Settlement Motion, the Debtors are seeking Court authority to enter into the Settlement with SCB in accordance with the terms identified in the Settlement Term Sheet. Hence, pursuant to Bankruptcy Rule 2002(a), a 21-day notice period typically would be required prior to a hearing on the motion.

10. The Debtors respectfully submit that cause exists for the Court, on an *ex parte* basis, to shorten the time for notice of the hearing on the SCB Settlement Motion.

11. Pursuant to the terms of the Settlement, SCB will not object to Approved DIP Financing sought by the Debtors. Additionally, SCB will consent to the EuroLog IPO and the Debtors' allocation of value of various assets that will be contributed to the IPO vehicle. Securing debtor in possession financing and launching the EuroLog IPO are essential components of the Debtors' reorganization efforts, and they are necessary to maximize the value of the estates.

12. The Settlement was the product of extensive negotiations and was just finalized on October 7, 2012. One of the express conditions imposed by SCB was that the Settlement be approved by the Court on or before **October 19, 2012**.

13. The Debtors are cognizant that the Court has a limited number of hearings in October, and there is little time remaining before the deadline mandated by SCB. However, if the SCB Settlement Motion is not approved by the October 19 deadline, then the Debtors risk losing the benefits of the Settlement.

14. Thus, for the foregoing reasons, the Debtors request that the SCB Settlement Motion be heard on an expedited basis. To this end, *ex parte* relief with respect to this Motion is warranted so that the SCB Settlement Motion may be heard as soon as practicable.

#### **NOTICE**

15. 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) the Committee, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.); (iii) the JPLs, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Alex R. Rovira, Esq. and Benjamin M. Klinger, Esq.); (iv) SCB, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 (Attn: Brian E. Greer, Esq. and Nicole Herther-Spiro, Esq.); (v) Silver Point, White & Case LLP, 1155 Avenue of the America, New York, NY 10036-2787 (Attn: Scott Greissman, Esq. and Andrew Zatz, Esq.); and (vi) 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.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

16. No prior motion for the relief sought in this Motion has been made to this  
or any other court.

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  
October 9, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
Matthew J. Williams (MW 4081)  
Matthew K. Kelsey (MK-3137)  
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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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<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>
	:	
-----X	:	

**ORDER SHORTENING THE NOTICE  
PERIOD WITH RESPECT TO THE DEBTORS'  
MOTION FOR ORDER SHORTENING THE NOTICE PERIOD WITH RESPECT TO  
THE DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, AUTHORIZING AND  
APPROVING THE SETTLEMENT WITH STANDARD CHARTERED BANK**

Upon consideration of the motion (the "**Motion**")<sup>1</sup> of Arcapita Bank B.S.C.(c) ("**Arcapita**") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "**Debtors**" and each, a "**Debtor**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), for entry of an order shortening the notice period with respect to the *Debtors' Motion for Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank* (the "**SCB Settlement Motion**"); and the Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and it appearing that no other or further notice is necessary except as provided herein; and the Court having reviewed the Motion and having considered statements in support of the relief requested therein; and the Court having

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



determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted to the extent set forth below.

2. The hearing to consider the SCB Settlement Motion shall be held on \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern Time) before the Honorable Sean H. Lane, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, Courtroom 701. The hearing on the SCB Settlement Motion may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court. Notice of such adjourned date(s) will be available on the electronic case filing docket.

3. The Debtors shall serve a copy of this Order within one day of entry thereof, by electronic mail, facsimile and/or overnight mail, on the Notice Parties (as defined below).

4. Any and all objections to the SCB Settlement Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and Local Rules of the Court, and shall be filed, with proof of service, with the Clerk of the Court and served on the following parties (the "*Notice Parties*") so as to be received by \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern Time):

- (a) counsel to the Debtors, attention: Michael A. Rosenthal, Matthew J. Williams and Matthew K. Kelsey, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, and Craig H. Millet, Gibson, Dunn & Crutcher LLP; 3161 Michelson Drive, Irvine, CA 92612-4412.
- (b) counsel to the Committee, attention: Dennis Dunne, Esq. and Evan Fleck, Esq., Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005;

- (c) counsel to the JPLs, attention: Alex R. Rovira, Esq. and Benjamin M. Klinger, Esq., Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019;
- (d) counsel to SCB, attention: Brian E. Greer, Esq., Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036;
- (e) counsel to Silver Point, attention: Scott Greissman, Esq. and Andrew Zatz, Esq., White & Case LLP 1155 Avenue of the America, New York, NY 10036-2787.
- (f) the Office of the United States Trustee for Region 2, attention: Richard Morrissey, 33 Whitehall Street, New York, New York 10004,

with a courtesy copy delivered to the chambers of the Honorable Sean H. Lane, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

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