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Counsel to the Hopper Parties

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

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In re:	:	Chapter 11
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ARCAPITA BANK B.S.C.(C), <i>et al.</i> ,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
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**HOPPER PARTIES' LIMITED OBJECTION TO DEBTORS' MOTION TO AMEND
SECOND ORDER EXTENDING EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS
OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THEREOF AND
FURTHER EXTENDING THE EXCLUSIVE PERIODS**

John M. Hopper, Edmund A. Knolle, Jeffery H. Foutch, Keith L. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust, (collectively, the "Hopper Parties"), file this Limited Objection to Debtors' Motion to Amend Second Order Extending Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof and Further Extending the Exclusive Periods, and the accompanying ex parte motion to

shorten time [Docket Nos. 701 and 702, respectively] (the “Motions”) and show the Court as follows:

1. On March 19, 2012, Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Company, Inc. (“Falcon”) commenced a case under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee”) [Docket No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code. Of the six current members of the Committee, three members are primarily creditors of only Arcapita Bank and three members are also creditors that have substantial claims against Arcapita Bank’s subsidiary, Arcapita Investment Holdings Limited (“AIHL”). None of the members of the Committee are creditors of Falcon.

3. Falcon was an “operating company” in the Debtors’ portfolio, much like some of the other companies mentioned in the Declaration Of Henry A. Thompson In Support Of The Debtors’ Chapter 11 Petitions And First Day Motions. [Dkt 6, at ¶ 7]. Like each of the Debtors’ operating companies, Falcon was a business separate and apart from the Debtors’ other businesses, and it had its own directors and officers and it had separate owners.

4. As the basis for a further extension of the exclusivity periods the Debtors state that the Committee has requested the extension as follows:

. . . the Committee has requested that the Debtors refrain from filing a plan for one more week to allow the continuation of further discussions among the Debtors, the Committee, and various other constituencies regarding a proposed settlement of intercreditor

issues. Throughout the process of evaluating various options for reorganization, the Debtors, the Committee, and the JPLs have engaged in an ongoing analysis of how to allocate the assets between the creditors of Arcapita Bank and the creditors of AIHL. Indeed, the Debtors, the Committee, and the JPLs have worked jointly in an attempt to develop a value allocation model that is reasonably acceptable to both groups of creditors. Most recently, the parties met substantially all of last week regarding this model and the parameters of a plan based on it.

5. There are no “intercreditor” issues facing the Falcon estate. Based on the schedules and the proofs of claim on file in the Falcon case, Falcon has two significant creditor groups — (i) Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P (together, “Tide”), and (ii) the Hopper Parties. Several other proofs of claim were filed that appear to be claims of employees relating to their alleged stock options, and other claims that appear to be proofs of interest in Falcon.

6. The Falcon case is straight forward. Falcon was liquidated (*i.e.*, sold) more than two years prior to the Falcon petition date. Falcon’s only asset is its claim to the funds in an HSCB Bank USA escrow account. Those funds are claimed to be owned by the Hopper Parties (in part), Falcon, and Tide. To the knowledge of the Hopper Parties, no other entity has any claim to the escrowed funds.

7. The Hopper Parties filed an adversary proceeding in this Court (Adv. No. 12-01662) to determine their rights to \$8.25 million of the escrowed funds. Tide was involved in pre-petition litigation against Falcon and Arcapita, which is stayed, and Tide also has filed proofs of claim in the Falcon case concerning its claims against Falcon.

8. While the Hopper Parties do not object to the requested extension of exclusivity with respect to the non-Falcon debtors, a further extension of exclusivity with respect to Falcon is not warranted. Other than the litigation concerning the Hopper Parties’ right to \$8.25 million of the escrowed funds, and the litigation concerning whether Tide is a creditor at all, and if so,

how much its claim should be, there is virtually no administration to be conducted of the Falcon bankruptcy case. None of the stated negotiations between the Debtor and the Committee and their constituents concern Falcon or its property or its creditors. There is not sufficient cause for the Court to grant a further extension of the exclusivity periods with respect to Falcon. The litigation and/or claims allowance process involving the escrowed funds in no way provides cause to further extend exclusivity in the Falcon case. The resolution of such litigation and/or the claims administration process routinely occurs post-confirmation in chapter 11 cases.

9. The Hopper Parties respectfully request that the Motions be denied in part and that the requested extension of the exclusivity period not include Falcon.

Dated: December 13, 2012

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