

**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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**DECLARATION OF STEVEN KOTARBA IN SUPPORT OF (I) DEBTORS’  
MOTION FOR ORDER FURTHER EXTENDING THE TIME  
TO FILE SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS  
AND (II) DEBTORS’ MOTION FOR AN ORDER FURTHER EXTENDING  
THE TIME TO FILE REPORTS OF FINANCIAL INFORMATION  
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2015.3(a)**

1. I, Steven Kotarba, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

2. I am authorized to submit this Declaration on behalf of Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and its affiliated debtors and debtors in possession (collectively, the “*Debtors*” and together with their non-Debtor affiliates, “*Arcapita*”), in support of the (a) *Debtors’ Motion for Order Further Extending the Time To File Schedules and Statements of Financial Affairs* [Docket No. 91] (the “*Schedules and Statements Extension Motion*”) and (b) *Debtors’ Motion for an Order Further Extending the Time To File Reports of Financial Information pursuant to Federal Rule of Bankruptcy Procedure 2015.3(a)* [Docket No. 90] (the “*2015.3 Extension Motion*” and together with the Schedules and Statements Motion, the “*Motions to Extend*”). I offer this Declaration to inform the Court concerning the status of the efforts by the Debtors and their professionals to synthesize data regarding the Debtors’ operations, capital structure and non-debtor subsidiaries and affiliates to compile the Schedules and Statements and the 2015.3 Reports (each, as defined below). I also offer this Declaration to

support the Debtors' request for additional time to compile the information and produce the 2015.3 Reports and the Schedules and Statements (each, as defined below).

3. Except as otherwise stated, all facts set forth in this Declaration are based upon my personal knowledge, information learned from my review of relevant documents, and information supplied to me by professionals at Alvarez & Marsal North America, LLC ("**A&M**") who are under my supervision and by members of the Debtors' management and by the Debtors' other advisors. If called upon to testify, I could and would testify to the facts set forth herein on that basis.

### **QUALIFICATIONS**

4. I am a Managing Director in the restructuring group of A&M, the Debtors' proposed financial advisor. My business address is 55 West Monroe Street, Suite 4000, Chicago, Illinois 60603.

5. I have extensive experience with chapter 11 cases and other distressed restructurings, principally advising debtors and various other stakeholders in the chapter 11 process. I have approximately 14.5 years of experience in advising troubled companies and their stakeholders. Since joining A&M in 2006, I have specialized in all aspects of bankruptcy case administration, including claims review and reconciliation, preparation of statements and schedules, legal noticing, and the development of custom solutions to complex case administration and claim reconciliation issues.

6. Before joining A&M, I was an attorney in the Corporate Restructuring Practice of Kirkland & Ellis, LLP and served as Director and Head of Chicago operations for the BMC Group, Inc., an international information management company.

7. I received my Bachelor of Arts degree in finance and economics from Indiana University, and a juris doctor, with distinction, from the University of Iowa College of Law.

8. Founded in 1983, A&M is a global professional services firm specializing in turnaround and interim management, performance improvement and business advisory services. A&M delivers specialist operational, consulting and industry expertise to management and investors seeking to accelerate performance, overcome challenges and maximize value across the corporate and investment lifecycles.

### **PROCEDURAL HISTORY**

9. On March 19, 2012 (the “**Petition Date**”), the Debtors filed the *Debtors’ Motion for Order Granting the Debtors Additional Time to File Schedules and Statements of Financial Affairs* [Docket No. 3] and the *Debtors’ Motion for Order Granting the Debtors Additional Time to File Reports of Financial Information Pursuant to Federal Rule of Bankruptcy Procedure 2015.3(a)* [Docket No. 5] (together, the “**Initial Extension Motions**”), requesting a total of 45 days from the Petition Date to file (a) (i) a schedule of assets and liabilities, (ii) a schedule of current income and expenditures, (iii) a schedule of executory contracts and unexpired leases and (iv) a statement of financial affairs (collectively, the “**Schedules and Statements**”) and (b) reports of financial information of non-Debtor entities in which the Debtors hold a controlling or substantial interest in accordance with the requirements of Rule 2015.3 of the Federal Rules of Bankruptcy Procedure (the “**Rule 2015.3 Reports**”).

10. At the “first day” hearing held on March 21, 2012, the Court granted the relief requested in the Initial Extension Motions. A day later, the Court entered both its *Order Extending the Time To File Schedules and Statements of Financial Affairs* [Docket No. 18] and *Order Granting the Debtors Additional Time To File Reports of Financial Information pursuant*

to *Federal Rule of Bankruptcy Procedure 2015.3* [Docket No. 20] (the “**Initial Extension Orders**”), thereby granting the Debtors 45 days from the Petition Date to file the Schedules and Statements and the Rule 2015.3 Reports, respectively, with the revised deadline to make such filings on or before May 3, 2012. On April 20, 2012, the Debtors moved for a bridge order extending the time required to file the Schedules and Statements and the Rule 2015.3 Reports to permit the Court to rule on the Motions currently at bar.

11. By the Motions, the Debtors are seeking to further revise the deadline to file the Schedules and Statements and Rule 2015.3 Reports to June 21, 2012.

### **THE PROPOSED EXTENSIONS**

#### **I. THE SCHEDULES AND STATEMENTS EXTENSION MOTION**

12. By the Schedules and Statements Extension Motion, the Debtors seek (a) an additional 45 days to file Items 3 and 23 of the Debtors’ statements of financial affairs (regarding payments to creditors and withdrawals from a partnership or distributions by a corporation) (“**SOFA 3 and 23**”) as well as the Schedules D, E and F (collectively, the “**Liability Schedules**”) and together with SOFA 3 and 23, the “**Subject Schedules and Statements**”) and (b) an additional 14 days to file the remainder of the schedules and statements of financial affairs (the “**Schedules and Statements**,” and all Schedules and Statements excluding the Subject Schedules and Statements, the “**Remaining Schedules and Statements**”).

13. The Debtors’ request for an extension of the deadline to file the Schedules and Statements is supported by the enormous amount of information which will be reflected in the Schedules and Statements, as well as the unique legal and practical issues raised by the Debtors’ complex organization and investment ownership structures. The Debtors remain committed to providing the Court and the Debtors’ various constituents with quality disclosure that completely

and accurately depicts the Debtors, their non-Debtor subsidiaries and affiliates and their respective businesses. To accomplish this task, the Debtors and their professionals have spent a considerable number of hours analyzing the company's debts, creditors, assets and ongoing obligations. To prepare their Schedules and Statements, the Debtors must compile information from books, records, documents and electronic databases located in numerous facilities throughout the world and relating to thousands of claims, assets and contracts.

14. To date, I along with my team at A&M, have worked with the Debtors at their headquarters to develop a comprehensive data collection process designed to compile the information necessary to complete the Schedules and Statements and to collect the significant amount of responsive data in a comprehensive and efficient manner. The Debtors have closed their books and separated liabilities into pre-petition and post-petition obligations. Preliminary drafts of the SOFAs and Schedules have been prepared and will be circulated internally in the near future. Nonetheless, I believe that additional time will be required to review additional payments and/or contracts. Moreover, given the complexity of the Debtors' operations, our preliminary drafts of the Schedule and Statements will require significant internal review and discussion to ensure that the Debtors produce accurate and comprehensive disclosure in a manner that enables the creditors to obtain an understanding of the Debtors and their estates.

15. I expect that an extensive amount of information will be provided in the Schedules and Statements based on the tasks described in the previous paragraph. I anticipate that Schedule G alone will require the Debtors and/or their professionals to review between 2,500 and 3,000 executory contracts and unexpired leases (including guarantees, third party service contracts, employment agreements, other human resource agreements, investment agreements, shareholder agreements, confidentiality agreements and financial documents).

Moreover, I anticipate that Schedules D and F could contain approximately 2,400 creditors in the aggregate.

16. Equally important, the nature of the Debtors' business requires consideration and analysis to ensure that the information complies with the requirements of the Bankruptcy Code and Bankruptcy Rules and accurately portrays the Debtors' financial condition. The Debtors operate a complex, international business. The Shari'ah compliant nature of the Debtors' investments mandates a thorough analysis and evaluation of certain characterizations to ensure the accuracy of the information in the Schedules and Statements. Further, due to the Debtors' organizational structure, information regarding certain investments held by the Debtors' non-Debtor subsidiaries will necessarily need to be identified to give an accurate depiction of the Debtors' financial condition in the Schedules and Statements. Preparation of the Schedules and Statements requires Arcapita Bank to compile information from many sources and locations to produce a cohesive disclosure schedule in a format that satisfies the Bankruptcy Code's requirements. I submit that additional time and effort is therefore required for the Debtors and their professionals to complete quality disclosure designed to provide stakeholders with a clear view of the Debtors' financial position.

## **II. THE RULE 2015.3 EXTENSION MOTION**

17. The Debtors also request an extension of the deadline to file the Rule 2015.3 Reports. Certain of the Debtors estimate that they may hold a substantial or controlling interest in at least 150 non-Debtor affiliate entities ("*Non-Debtor Affiliates*"), many of which have separate businesses and separate credit facilities with different investors, and some of which have joint venture partners. Additional time is necessary to verify which Non-Debtor Affiliates are subject to disclosure pursuant to Rule 2015.3. The Non-Debtor Affiliates are located in various

countries including Hong Kong, Singapore, Malaysia, multiple European countries, and the United States. Many of these Non-Debtor Affiliates have substantial assets and operations, and assembling and compiling the financial reports setting forth the value, operations, and profitability of these various Non-Debtor Affiliates throughout the world will require significant time and effort by the Debtors' personnel and advisors.

18. Production of financial reports that value the Non-Debtor Affiliates on an entity-by-entity basis and summarize each such Non-Debtor Affiliate's operations will require review and analysis of a tremendous amount of information maintained by or relating to the Debtors' foreign affiliates and third parties. This information is voluminous and located in numerous facilities throughout the world. As such, a significant amount of work will be necessary to reconcile and consolidate balances to accurately report the activities of the Debtors and the Non-Debtor Affiliates. Further, most of those accounting systems, along with key personnel who are responsible for oversight of the accounting systems, are located outside of the United States with no direct reports located domestically. As a result of the foregoing, collecting and analyzing this information will require a significant amount of time and effort.

#### **SUMMARY**

19. Based on the foregoing, I submit that relief sought in the Motions to Extend is appropriate in light of the time and effort required to produce the Schedules and Statements and the Rule 2015.3 Reports and accordingly, the Motions to Extend should be approved. The Debtors and their professionals remain committed to providing the Court and the Debtors various stakeholders with quality disclosure regarding the assets, liabilities and operations of the Debtors and their non-Debtor subsidiaries and affiliates. The additional time sought in the Motions to Extend is appropriate to enable the Debtors and their professionals to complete this task.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on April 24, 2012

/s/ Steven Kotarba  
Steven Kotarba  
Managing Director, Alvarez & Marsal