

**GIBSON, DUNN & CRUTCHER LLP**

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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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**NOTICE OF MOTION FOR AN ORDER CONFIRMING DEBTORS' AUTHORITY  
TO IMPLEMENT PLAN LIQUIDATION PROCEDURES FOR  
SECURITIES DISTRIBUTABLE TO NON-ELIGIBLE CLAIMANTS**

PLEASE TAKE NOTICE that on August 13, 2013, Arcapita Bank B.S.C.(c) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**")<sup>1</sup> in the above-captioned chapter 11 cases filed the annexed *Motion For An Order Confirming Debtors' Authority To Implement Plan Liquidation Procedures For Securities Distributable To Non-Eligible Claimants* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion shall be filed electronically with the Court on the docket of *Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL), pursuant to the Case Management Procedures approved by this Court and

<sup>1</sup> As used herein, the term Debtors does not include Falcon Gas Storage Company, Inc., whose chapter 11 case is also being jointly administered under case number 12-11076.

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, 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 (a) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq.); (b) 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.); and (c) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), so as to be received no later than **August 20, 2013 at 4:00 p.m. (prevailing U.S. Eastern time)** (the "***Objection Deadline***").

PLEASE TAKE FURTHER NOTICE that all replies, if any, must filed and served no later than **August 22, 2013 at 12:00 p.m. (prevailing U.S. Eastern time)**.

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 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  
August 13, 2013

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
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ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION

Hearing Date and time: August 27, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)

Objection Deadline: August 20, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)

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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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IN RE:	: Chapter 11
ARCAPITA BANK B.S.C.(c), <i>et al.</i> ,	: Case No. 12-11076 (SHL)
Debtors.	: Jointly Administered
	: X
-----X	

**MOTION FOR AN ORDER CONFIRMING DEBTORS' AUTHORITY  
TO IMPLEMENT PLAN LIQUIDATION PROCEDURES FOR  
SECURITIES DISTRIBUTABLE TO NON-ELIGIBLE CLAIMANTS**

Arcapita Bank B.S.C.(c) ("*Arcapita Bank*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*")<sup>1</sup> in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*"), submit this motion (the "*Motion*") for entry of an order substantially in the form attached hereto as *Exhibit A* confirming the Debtors' authority to implement liquidation procedures, pursuant to the Debtors' confirmed chapter 11 plan of reorganization [Docket No. 1265] (the "*Plan*"),<sup>2</sup> for securities (the "*Securities*") that must be liquidated pursuant to the

<sup>1</sup> As used in this Motion, the term Debtors does not include Falcon Gas Storage Company, Inc., whose chapter 11 case is also being jointly administered under case number 12-11076.  
<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Plan because they are distributable to Claimants who are not eligible to receive such Securities (the “*Non-Eligible Claimants*”). In support thereof, the Debtors respectfully represent:

### **BACKGROUND**

1. On March 19, 2012, each of the Debtors commenced cases under chapter 11 of the Bankruptcy Code. 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. The United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors (the “*Committee*”) on April 5, 2012 [Docket No. 60].

2. On April 26, 2013, the Court entered an order approving the Debtors’ *Second Amended Disclosure Statement in Support of the Second Amended joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* (the “*Disclosure Statement*”) [Docket No. 1045]. On June 17, 2013, the Court entered an order confirming the Debtors’ Plan [Docket No. 1262]. As of the filing of this Motion, the Plan’s Effective Date has not yet occurred.

### **JURISDICTION AND VENUE**

3. 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)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

4. The Debtors request that the Court enter an order substantially in the form attached hereto as Exhibit A, confirming the Debtors’ authority to implement the liquidation procedures described herein to liquidate certain Securities as required by the Plan.

**BASIS FOR RELIEF REQUESTED**

5. Section 11.1.7 of the Plan states that the Court has retained jurisdiction to “enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan . . . .”

6. Pursuant to the Plan, Securities will be distributed to Holders of Claims in certain Classes in satisfaction of such Claims. The Securities are the Sukuk Obligations, the New Arcapita Class A Shares, the New Arcapita Ordinary Shares, the New Arcapita Creditor Warrants, and the New Arcapita Shareholder Warrants.

7. However, as a result of certain U.S. securities laws that are applicable to the Debtors, the Securities can only be issued to Qualified Purchasers,<sup>3</sup> Knowledgeable Employees,<sup>4</sup> and Non-U.S. Persons.<sup>5</sup> As defined in the Plan, Non-Eligible Claimants are those Claimants who are not any of the following: (i) a Qualified Purchaser, (ii) a Knowledgeable Employee, or (iii) a Non-U.S. Person. Accordingly, the Plan provides that if a Non-Eligible Claimant is entitled to receive Securities, those Securities “shall be liquidated,” and the applicable Non-Eligible Claimant “shall receive the proceeds thereof in lieu of any other Distribution.” See Plan Sections 4.4.2, 4.5.2.1, 4.5.2.2, and 4.8.2.1.

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<sup>3</sup> Qualified Purchaser has the meaning ascribed to such term in Rule 2a51-1, promulgated under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1—80a-64, together with all amendments and modifications thereto (the “*Investment Company Act*”).

<sup>4</sup> Knowledgeable Employee has the meaning ascribed to such term in Rule 3c-5, promulgated under the Investment Company Act.

<sup>5</sup> Non-U.S. Person means any entity that is not a “U.S. person,” as that term is defined under Regulation S, promulgated under the Securities Act of 1933, 15 U.S.C. §§ 77a-77m, together with all amendments and modifications thereto.

8. The Debtors believe that most, if not all, of the Non-Eligible Claimants will hold small Claims in Class 5(a).<sup>6</sup> The Debtors have determined that because the Securities will be issued over an extended course of time pursuant to Section 8.3 of the Plan, the costs of liquidating the Securities that would otherwise be distributed to Non-Eligible Claimants (the “*Non-Eligible Securities*”) through seriatim sales of relatively small batches of Non-Eligible Securities will be disproportionate to the proceeds that can be realized from such sales. Accordingly, the Debtors believe that they should be authorized to liquidate the Non-Eligible Securities that would otherwise be distributable to Holders of Claims in Class 5(a) by providing the Non-Eligible Claimants in Class 5(a) with a recovery that is consistent with the recovery provided to other Holders of Class 5(a) Claims that made the Convenience Class Election.

9. As set forth in the Disclosure Statement, the Debtors believe that the value of the Securities that will be issued to Holders of Allowed Class 5(a) Claims will equal approximately 7.7% of the face value of such Claims. Holders of Class 5(a) Claims that made the Convenience Class Election will receive Cash in an amount equal to the lesser of (i) 50% of the aggregate sum of such Holder’s Allowed Class 5(a) Claims, or (ii) \$12,500. Thus, the Debtors believe the Convenience Class Election would have been economically rational for any Holder of Allowed Class 5(a) Claims with a face value of less than \$162,337 because the expected recovery on account of such Claims is greater in the Convenience Claim Class (Class 6(a)) than in Class 5(a).

10. Given the expected costs of liquidating the Non-Eligible Securities, the Debtors propose to treat Non-Eligible Claimants in Class 5(a) whose aggregate Allowed Class 5(a)

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<sup>6</sup> The Debtors will not know which Holders of Claims are Non-Eligible Claimants until such Holders return the eligibility forms that will be mailed to all Holders of Claims and Interests entitled to receive Securities pursuant to the Plan.

Claims are less than or equal to \$160,000 as if they had made the Convenience Class Election (the “*Deemed Convenience Class Treatment*”). Because of securities regulations and the costs associated with liquidating the Securities pursuant to a formal auction, the Debtors further propose to provide the Deemed Convenience Class Treatment to all other Non-Eligible Claimants with Claims in Class 5(a) unless they choose to opt-out of such treatment on a “securities eligibility form,” which will be sent to all Holders of Claims and Interests entitled to receive Securities pursuant to the Plan. In other words, the Debtors propose to pay each Non-Eligible Claimant receiving the Deemed Convenience Class Treatment in Cash in an amount equal to the lesser of (i) 50% of the aggregate sum of such Non-Eligible Claimant’s Allowed Class 5(a) Claims, or (ii) \$12,500.

11. The Debtors believe that after implementation of the procedures described herein for the liquidation of Non-Eligible Securities, there will be very few, if any, Non-Eligible Securities remaining to be liquidated. The Debtors seek confirmation of their authority to liquidate those remaining Non-Eligible Securities in any commercially reasonable fashion that is not otherwise prohibited by law, taking into account the costs of liquidation and the anticipated proceeds of any liquidation procedure.

**NOTICE**

12. 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.); and (iii) 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**

13. 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: August 13, 2013  
New York, New York

Respectfully submitted,

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
**GIBSON, DUNN & CRUTCHER LLP**  
200 Park Avenue  
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ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION

**EXHIBIT A**

**Proposed Order**



Debtors, their estates and creditors; and (e) notice of the Motion was sufficient, and no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted to the extent set forth herein.
2. With respect to any (i) Non-Eligible Claimant with Claims in Class 5(a) that are Allowed in an aggregate amount that is less than or equal to \$160,000, or (ii) Non-Eligible Claimant with Claims in Class 5(a) that are Allowed in an aggregate amount that is greater than \$160,000 that does not opt out of the Deemed Convenience Class Treatment on the securities eligibility form returned by such Non-Eligible Claimant, the Debtors are authorized to pay each such Non-Eligible Claimant, in lieu of any other Distribution, Cash in an amount equal to the lesser of (a) 50% of the aggregate amount of such Non-Eligible Claimant's Allowed Class 5(a) Claims, or (b) \$12,500. The Non-Eligible Securities that otherwise would have been distributable to such Non-Eligible Claimants shall be cancelled or transferred to New Arcapita Topco, as determined by the New Board of New Arcapita Topco in its sole discretion.
3. The Debtors are authorized to liquidate any Non-Eligible Securities that are not liquidated pursuant to paragraph 2 hereof in any commercially reasonable fashion that is not otherwise prohibited by law, taking into account the costs of liquidation and the anticipated proceeds of any liquidation procedure.
4. The Debtors are authorized to take such actions as may be necessary or appropriate to effectuate the relief granted herein.

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

Dated: August \_\_, 2013  
New York, New York

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE