

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

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**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), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN
CONNECTION WITH DEBTORS' EIGHTEENTH INTERIM BUDGET**

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and the other debtors in possession in the above-captioned jointly administered chapter 11 cases (collectively, the "Debtors") hereby submits this statement in connection with the *Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to (i) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (ii) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code [Docket No. 12] and the Notice of Filing of Proposed Eighteenth Interim Budget to Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to (i) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (ii) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code [Docket No. 1453] (the "Proposed Budget")* and respectfully states as follows:

STATEMENT

1. As the Court is aware, the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (with First Technical Modifications* [Docket No. 1265] (the “Plan”) was confirmed on June 17, 2013.¹ More than two months have passed and approximately \$28 million in expenses have been incurred since that time.² After much delay, all conditions precedent to the occurrence of the Effective Date (as set forth in section 10.1 of the Plan) can be satisfied by the end of this week (August 30, 2013). There are no legal obstacles remaining to the consummation of the Plan.

2. Despite the foregoing, the Proposed Budget contemplates that the Debtors’ creditors will continue to bear the heavy costs of these chapter 11 cases – and the startup costs of AIM Group Limited (“AIM”) – for at least three more weeks, to the tune of approximately \$15 million. As the Court is aware, the projected Effective Date has been repeatedly postponed, from July 31,³ to August 15,⁴ August 30 and now potentially to mid-September. The creditors have become increasingly frustrated by these delays and the associated costs, but their options to accelerate the consummation process are very limited. Absent intervention from the Court, it is the Debtors who have the control over when the confirmed Plan goes effective.⁵

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Plan.

² This figure is comprised of all G&A Expenses, Staff Expenses, and Other Expenses that have become payable during this time period, as well as all professional fees that have been incurred, but the figure does not include Deal Funding expenditures, on account of which expenses the Debtors anticipate full repayment upon monetization of the relevant portfolio investments. Generally, the amount reflects all actual expenses incurred (or estimates of these expenses, where actual figures are not yet available) from the date of confirmation of the Plan through the August 27, without regard to whether such expenses have yet been paid.

³ See Transcript of June 24 Hr’g, at 6.

⁴ See Transcript of July 18 Hr’g, at 8.

⁵ The Committee may seek relief from this Court under section 1142(b) of the Bankruptcy Code to compel consummation of the Plan.

3. The Debtors' senior management team, however, which is comprised of the same people who soon will be running AIM, does not appear to be in a hurry to consummate the Plan. As the Court has recognized, the insider relationship between AIM and the Debtors requires heightened scrutiny. Nowhere are the inherent conflicts of interest manifested more clearly than in the timing of the Debtors' emergence from chapter 11. The longer the Debtors postpone the Effective Date, the more start-up costs of AIM, such as salaries of individuals involved in activities unrelated to AIM's future management of the Reorganized Debtors' business, and AIM's outside professional costs, are being borne by the Debtors' creditors. Accordingly, each day of delay results in further expense to the Debtors' creditors, with concomitant savings to AIM.

4. To address these concerns, the Committee intends to scrutinize all line items in the Proposed Budget to make sure that the proposed expenditures, in fact, are necessary for the administration of the Debtors' estates during the remaining days of these chapter 11 cases. It may turn out that certain budget items will be unnecessary or can be deferred until the new board of directors has been installed and can evaluate their merits.

5. The Committee has already identified certain items in the Proposed Budget that raise concerns. For example, the Debtors request authorization to spend \$298,000 during the first three weeks of September on "business development," which refers to travel expenses. The Debtors have failed to provide a complete breakdown of these anticipated travel expenditures.⁶ Given this lack of transparency, the Committee cannot support any of the "business development" expenses in the Proposed Budget at this point.

⁶ In connection with the seventeenth interim budget, the Debtors agreed to provide a breakdown of anticipated travel expenses, as well as reconciled actual travel expenditures a reasonable period of time after the travel had been completed. Thereafter, the Debtors provided a breakdown of planned travel expenses in advance of proposed budgets; however, the Debtors refused for weeks to provide the Committee with information regarding actual travel expenditures.

6. Another example of proposed expenditures that cause the Committee's concern is the Debtors' proposed payment of approximately \$45,000 to a professional services firm they had previously retained with respect to a portfolio company in which the Debtors have not had an interest for years.⁷ There is no longer any value in this portfolio company structure, and the Debtors have thus far been unable to provide any justification for this expenditure. While the Committee is still examining the details of this expenditure, it does not appear that it is related to any potential benefit to the Debtors' estates.

7. The Debtors have also requested authorization to pay \$6.9 million dollars to various contractors, who have performed work on a major infrastructure project over the past few years.⁸ The Debtors have not persuaded the Committee that this payment must be made now, rather than allowing the new boards of the Reorganized Debtors and the New Holding Companies to evaluate the appropriateness of the payments.

8. Accordingly, the Committee proposes that the Proposed Budget be approved, subject to the Committee's approval for all expenditures that are not governed by an existing Court order (including the fees and expenses of professionals retained in these chapter 11 cases).⁹ That is, the Debtors should be permitted to make a proposed expenditure (other than an expenditure governed by a separate Court order) only if specifically approved in advance by the Committee. If the Committee does not approve any such budget item, and the Debtors still wish to make the expenditure, the Debtors should be required to make a further application to the Court. These procedures are consistent with the approach taken throughout

⁷ This expenditure is reflected in the Proposed Budget as a portion of the "G&A Expenses" for the Atlanta office during the week ended September 7.

⁸ This expenditure represents a substantial portion of the "Infrastructure" line in the Proposed Budget.

⁹ Professional fees and expenses are subject to Court approval or disgorgement in connection with the respective professionals' final fee applications.

these cases with respect to the so-called “conditionally approved” budget items in connection with the previous budget approval requests, and extending this same procedure to the Proposed Budget will allow the Committee to more closely safeguard estate assets.

CONCLUSION

9. Based on all of the foregoing, the Committee respectfully requests that the Court (a) enter an interim order approving the Proposed Budget, subject to the Committee’s approval of specific budget items as described above, and (b) grant any other or additional relief that is just.

Dated: New York, New York
August 26, 2013

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