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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), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
	:	
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**REORGANIZED DEBTORS' MOTION FOR ORDER
MODIFYING THE PLAN**

The above-captioned Reorganized Debtors, by and through their undersigned counsel, hereby move the Court (the "Motion"), pursuant to Sections 1142(b) and 105(a) of the Bankruptcy Code, to modify a certain provision of the plan of reorganization confirmed in the chapter 11 cases of their predecessors in interest (the "Plan") related to distributions thereunder.² In support of the relief requested in the Motion, the Reorganized Debtors respectfully state the following:

¹ The Reorganized Debtors are: RA Bahrain B.S.C.(c), RA Investment Holdings Limited, RA LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited and RailInvest Holdings Limited.
² All capitalized terms not otherwise defined have the respective meanings ascribed to them in the Plan.

BACKGROUND

1. The Plan was confirmed on June 17, 2013 and became effective on September 17, 2013. In accordance with Article IV of the Plan, as a condition precedent to receiving Distributions under the Plan consisting of Sukuk Obligations, New Arcapita Class A Shares, New Arcapita Ordinary Shares, New Arcapita Creditor Warrants and New Arcapita Shareholder Warrants (collectively, the “Plan Securities”), the holders of Allowed Claims in the relevant classes had to comply with the New Unsecured Claim Distribution Procedures. Among other things, these holders of Allowed Claims were required to submit a release of claims, applicable tax identification information, and other items requested by the Reorganized Debtors (collectively, the “Verification Materials”). The Reorganized Debtors prepared and disseminated letters requesting the Verification Materials within a week following the Effective Date.

2. As described in greater detail in the *Motion for Order in Aid of Implementation of the Plan* [Docket No. 2053], the Reorganized Debtors requested clarification from the Court regarding certain terms of the Plan, particularly the concept of the Forfeiture Date in the circumstance that a holder of an Allowed Claim has failed to return the Verification Materials. In the *Order in Aid of Implementation of the Plan* [Docket No. 2073], the Court clarified appropriate standards for determining the occurrence of the Forfeiture Date. Based on the Court’s clarification, the Forfeiture Date differed with respect to particular Claims, the latest being one year after the allowance of the Claim.

3. Under Section 8.3 of the Plan, as soon as practicable after the Effective Date, the Reorganized Debtors made the initial Distribution of Plan Securities. However, while the Disputed Claims were being resolved, and while the Forfeiture Dates for various Allowed Claims had not passed, the Reorganized Debtors had to keep a certain number of Plan Securities

in reserve. As Disputed Claims became Allowed or Disallowed, and as the Forfeiture Dates of various Allowed Claims passed, the Reorganized Debtors recalculated the allocation of the Plan Securities among the holders of Allowed Claim in each Class and made the necessary “catch-up” Distributions. Section 8.3 of the Plan provides that such catch-up Distributions must be made every 180 days. At this point, the only Plan Securities still held in reserve are New Arcapita Ordinary Shares, New Arcapita Creditor Warrants and New Arcapita Shareholder Warrants (collectively, the “Reserved Securities”).

4. On the Effective Date, Arcapita Bank and AIHL transferred substantially all of their assets to various wholly-owned subsidiaries of a newly formed entity, RA Holding Corp. (collectively, along with their affiliates, the “RA Group”). The RA Group oversees the maintenance and disposition of interests in portfolio investments formerly held by the Debtors, and the proceeds of such dispositions inure to the benefit of the holders of the Plan Securities. Cash proceeds of the monetization of these investments are being regularly disbursed to redeem the Plan Securities in the order of their seniority.

5. Since the Effective Date, all of the Sukuk Obligations have been redeemed by cash distributions totaling \$650.8 million. Beginning in September 2015, the Reorganized Debtors commenced making cash distributions on account of the New Arcapita Class A Shares. No cash distributions will be made on the New Arcapita Ordinary Shares (which are next in the waterfall after the New Arcapita Class A Shares) until the New Arcapita Class A Shares redemption preference (\$809.9 million) has been paid in full.

6. Preparing for and making each catch-up Distribution costs the Reorganized Debtors approximately \$50,000, and is administratively burdensome, requiring a lot of effort from the Reorganized Debtors’ personnel and professionals. Until the Reserved

Securities are “in the money” (*i.e.*, until they become entitled to cash redemption), it should not make any difference to the holders of Allowed Claims entitled to a catch-up Distribution of the Reserved Securities whether they have possession of the Reserve Securities or whether such securities are still being reserved for them by the Reorganized Debtors. Based on the foregoing, the Reorganized Debtors believe that it would be wasteful and inefficient to continue to expend approximately \$50,000 on each catch-up Distribution, and request that the Plan be modified to dispense with the requirement that catch-up Distributions be made every 180 days. Instead, the Reorganized Debtors propose to make just one more final catch-up Distribution when the Reserved Securities are “in the money.” The cash saved by this modification of the Plan is best expended on funding further redemption of the New Arcapita Class A Shares.

RELIEF REQUESTED

7. Based on the foregoing, the Reorganized Debtors respectfully request that the Court enter an order, substantially in the form of **Exhibit A** attached hereto, amending the Plan to allow the Reorganized Debtors to dispense with the requirement of making a catch-up Distribution of the Plan Securities every 180 days and, instead, allowing them to make one last Distribution of the Reserved Securities when such securities become entitled to cash redemption.

JURISDICTION

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections 1142(b) and 105(a) of the Bankruptcy Code, and Rule 3020(d) of the Federal Rules of Bankruptcy Procedure.

BASIS FOR RELIEF REQUESTED

9. Under Section 1142(b) of the Bankruptcy Code, the Court has the power to “direct the debtor and any other necessary party” to perform “any act . . . that is necessary for the consummation of the plan.” 11 U.S.C. § 1142(b). “The clear intent of section 1142(b) of the bankruptcy Code is to assure the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed and the final decree is entered closing the case.” In re Chateaugay Corp., 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996), aff’d in part, 213 B.R. 633 (S.D.N.Y. 1997). Similarly, Rule 3020(d) of the Federal Rules of Bankruptcy Procedure provides that “[n]otwithstanding the entry of an order of confirmation, the court may issue any other order necessary to administer the estate.”

10. Furthermore, Sections 11.1.7 and 11.1.10 of the Plan reserve for this Court the exclusive jurisdiction to, respectively, “enter such orders as may be necessary or appropriate to . . . implement . . . the provisions of the Plan” and “approve any modifications of the Plan before or after the Effective Date.”

11. Finally, Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). Section 105(a) grants bankruptcy courts broad authority to enforce the provisions of the Bankruptcy Code either pursuant to express statutory language or under equitable common law doctrine. See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994) (“It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”).

12. Accordingly, the Court has the authority and power to grant the relief

requested herein.

13. As stated above, at this point, making catch-up Distributions of the Reserved Securities to the holders of Allowed Claims is both burdensome and inefficient. Accordingly, it the Reorganized Debtors respectfully request, pursuant to Section 1142(b) and 105(a) of the Bankruptcy Code, that the Court authorize an amendment to the Plan, which would allow the Reorganized Debtors to dispense with the requirement of making catch-up Distributions every 180 days and, instead, making just one last catch-up Distribution of the Reserved Securities.

NOTICE

14. Notice of this Motion will be (i) served on the U.S. Trustee and the Master Service List parties and (ii) posted on the RA Holding Corp. Case Administration Website at <http://cases.gcginc.com/arcapita>. The Reorganized Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) amending the Plan to allow the Reorganized Debtors to dispense with the requirement of making a catch-up Distribution of the Plan Securities every 180 days and, instead, allowing them to make one last catch-up Distribution of the Reserved Securities at such time as these securities are “in the money,” and (ii) granting such other relief as may be just and proper under the circumstances.

Dated: August 23, 2016
New York, New York

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Evan R. Fleck

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*Counsel for the Reorganized Debtors and
New Holding Companies*

EXHIBIT A

Proposed Order

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

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In re:	:	Chapter 11
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**ORDER GRANTING REORGANIZED DEBTORS’ MOTION FOR ORDER
MODIFYING THE PLAN**

Upon consideration of the above-captioned Reorganized Debtors’ motion seeking entry of an order, pursuant to 1142(b) and 105(a) of the Bankruptcy Code, modifying a certain provision of the plan of reorganization confirmed in the above-captioned chapter 11 cases (the “Plan”) related to distributions thereunder (the “Motion”);² and the Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Sections 11.1.7 and 11.1.10 of the Plan; and the Court having found that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion was appropriate under the circumstances; and the Court having reviewed the Motion and having considered the objections, if any, to the relief requested in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Reorganized Debtors and other parties in interest, it is hereby:

ORDERED that the relief requested in the Motion is granted; and it is further

¹ The Reorganized Debtors are: RA Bahrain B.S.C.(c), RA Investment Holdings Limited, RA LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited and RailInvest Holdings Limited.

² All capitalized terms not otherwise defined have shall have the respective meanings ascribed to them in the Motion.

ORDERED that Section 8.3 of the Plan is hereby amended; and it is further

ORDERED that the Reorganized Debtors are no longer required to make catch-up Distributions of Plan Securities every 180 days; instead, the Reorganized Debtors are hereby authorized to make one last catch-up Distribution of the Reserved Securities when such securities become entitled to cash redemption; and it is further

ORDERED that the Court shall retain exclusive jurisdiction to interpret and enforce the terms of this Order.

Dated: New York, New York
_____, 2016

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE