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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

SUPPLEMENTAL DECLARATION OF BRIAN L. CUMBERLAND, MANAGING DIRECTOR OF ALVAREZ & MARSAL TAXAND, LLC, IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS TO IMPLEMENT EMPLOYEE PROGRAMS AND GLOBAL SETTLEMENT OF CLAIMS

Pursuant to 28 U.S.C. § 1746, I, Brian L. Cumberland, hereby declare:

1. I am a Managing Director with Alvarez & Marsal Taxand, LLC ("***A&M Taxand***"), the tax consulting practice of Alvarez & Marsal North America, LLC ("***A&M***"). My business address is 2100 Ross Avenue, Suite 2100, Dallas, Texas 75201. A&M is a professional services firm that has been retained on an interim basis by the Debtors in these Chapter 11 Cases.

2. Except as otherwise indicated, all facts set forth in this supplemental declaration are based upon my personal knowledge and experience, my review of publicly available and proprietary information regarding incentive plans in chapter 11 cases, and

information learned from my review of relevant documents and information supplied to me by management and advisors of the above-captioned debtors and debtors in possession (collectively, the "***Debtors***" and each, a "***Debtor***"), including A&M and A&M Taxand advisors. I am authorized to submit this supplemental declaration in support of *Debtors' Motion for an Order Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims* [Dkt. 205] filed on June 5, 2012 (the "***Filing Date***"), as supplemented by the *Supplement to Debtors' Motion for an Order Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims* [Dkt. 273] filed on June 22, 2012 (the "***Supplement Date***") (as supplemented, the "***Motion***")[1] and to supplement my initial declaration attached as **Exhibit D** to the Motion. If called upon to testify, I would testify competently to the facts and opinions set forth herein.

OVERVIEW

3. I am an expert in executive and management compensation with over 20 years of experience in the field. I have familiarized myself with the Debtors' operations and unique challenges, reviewed the Debtors' key employee retention program (the "***KERP***") and the key employee incentive plan (the "***KEIP***" and collectively with the KERP, the "***Continuing Employee Programs***"), gathered relevant market data on incentives in chapter 11, reviewed data regarding the compensation levels at the Debtors' peer chapter 11 debtors, and analyzed whether the Continuing Employee Programs are consistent with typical market practice. I submit this supplemental declaration in order to provide additional information regarding the selection of

[1] Capitalized terms used but not otherwise defined herein have the meanings set forth in the Motion.

key performance indicators, KEIP and KERP participants and the incentive amounts for the KEIP or KERP participants.

4. The Debtors began the process of developing the Continuing Employee Programs several weeks ago as part of the restructuring process. Although the Continuing Employee Programs were designed to aid with the restructuring process, the Debtors used information from the performance measures in their annual review process to develop the metrics incorporated into the Continuing Employee Programs, in particular, the KEIP. In addition, the Financial KEIP Performance Goals (as defined in the Supplement) were developed based on the anticipated requirements of the Debtors' businesses and reflect the Debtors' development of a business plan in connection with the Chapter 11 Cases. In developing the Continuing Employee Programs, the Debtors' management worked closely with their advisors to study comparable market information and leverage their advisors' experience in this area.

KEIP AND KERP PARTICIPANTS

5. By the Motion, the Debtors seek authority to establish employee compensation programs structured to provide 55 Employees with incentive or retention pay during the Chapter 11 Cases, subject to the terms of the KEIP or the KERP, as applicable. After the Filing Date, the Debtors reduced the number of KEIP and KERP recipients by four Employees in aggregate (three Employees in the KERP and another in the KEIP). The modifications reduced the total pools of KERP participant Employees to 36 non-insider Employees and KEIP participant Employees to 4 insider and 15 non-insider Employees. Looking only at job title, no KEIP participant has a job below Director. Approximately one-third of the KERP participants are Directors. The other two-thirds are Principals, Senior Associates and Associates.

6. After considerable analysis of the various responsibilities and authorities of Arcapita Group Employees, the Debtors' management and advisors concluded that all Employees with a rank of Executive Director or higher are insiders for purposes of section 503(c) of the Bankruptcy Code. Executive Directors, unlike Directors, and subject to Senior Management Committee approval, oversee the origination, negotiation and execution of transactions, investments and corporate strategy. By contrast, Directors generally monitor investment performance and/or support to the strategic development of corporate assets and investments.[2] I am informed there are only 15 insiders, including senior management. Notably, the top seven members of the Debtors' management are not participating in any of the Employee Programs. Of the remaining eight insiders, only four are recipients under the Continuing Employee Programs. All four are KEIP participants. No insider is a KERP participant.

7. The KEIP and KERP participants were selected from a pool of Employees who were generally eligible for prepetition bonuses. In selecting KEIP and KERP participants, the Debtors considered the importance of specific Employees to Arcapita Group operations, the value of the Employees' deliverables, Employees' flight-risk, and, in some cases, the size of Employees' unpaid prepetition bonuses. Specific attention was paid to (i) participant Employees' specific abilities to execute key goals related to the restructuring process and (ii) identifying performance goals that would enhance the value of the estates for the benefit of creditors. In addition, the Debtors, with the assistance of their advisors, considered the magnitude of awards that would motivate such Employees to deliver superior performance.

[2] After the Filing Date, the Debtors provided the Office of the United States Trustee with detailed descriptions of the job responsibilities and scope of all KEIP and KERP participants with a job title of either Director or Executive Director. Notably, even Arcapita Group Executive Directors lack authority to control the operation or disposition of Arcapita Group investments or portfolio companies. Such decisions are generally made by or

Certain Directors, while not insiders, were designated as KEIP participants (rather than KERP participants) where the Arcapita Group could identify specific performance milestones applicable to such Employees which, if reached, would create value for the estates and further the Debtors' restructuring efforts.

KEY PERFORMANCE GOALS

8. Under the KEIP program, a participant's receipt of an award depends upon the Arcapita Group's accomplishment of between one and six individualized KEIP Performance Goals. Given the unique circumstances of these cases, where the Debtors manage investment portfolios, the KEIP Performance Goals by necessity vary by Employee. KEIP Participants fall in one of two categories: (a) Employees who have shouldered additional responsibilities on account of the U.S. and Cayman insolvency proceedings and (b) Employees managing or overseeing one or more specific Arcapita Group portfolio companies and investments. KEIP Performance Goals for Employees in the former category generally are tied to restructuring milestones. KEIP Performance Goals for Employees in the latter category generally are linked to portfolio companies' satisfaction of specific financial performance goals. Taken together, payment of a participant's KEIP award may be conditioned on the achievement of one or more of the following milestones: (a) specific portfolio companies' attainment of significant EBITDA numbers for the last six months of 2012;[3] (b) targeted global cost reductions; (c) overhead reductions through the accomplishment of a planned reduction in force; (d) the monetization of specific Arcapita Group assets; (e) the termination or release of other assets with a minimal incurrence of liabilities; and (f) the accomplishment of specific restructuring milestones (i.e.,

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at the direction of Arcapita's Senior Management Committee. No member of the Senior Management Committee is a KEIP or KERP participant.

delivering a business plan, filing a chapter 11 plan, obtaining postpetition financing), all by dates certain. As discussed at length below, these metrics were chosen so that, if achieved, the result would benefit the estates and all stakeholders. Accordingly, incentivizing Employees to achieve these metrics made sense in the context of a chapter 11 case.

9. Senior management elected to use individualized KEIP Performance Goals to link a KEIP participant's payment to his or her job performance and the value created by that performance. During the development of the KEIP, the Arcapita Group considered using alternative metrics, including enterprise-wide metrics commonly used by other chapter 11 debtors. However, after careful analysis on the issue, the Debtors concluded that individual performance indicators would be more appropriate in the Chapter 11 Cases and create value for the benefit of stakeholders. Accordingly, the Debtors developed specific goals tailored to match the KEIP participant's scope of employment, such that management could clearly communicate to the Employees (a) management's expectation regarding performance, (b) the importance of achieving the targets, (c) the relevant personnel participating in the Continuing Employee Programs and (d) the payment procedures under the Continuing Employee Programs.

10. Between the Filing Date and the Supplement Date, the Debtors, the Committee and their advisors continued to develop the KEIP and, in particular, the KEIP Performance Goals. A revised set of KEIP Performance Goals were filed, under seal, on the Supplement Date. All modifications to the KEIP Performance Goals since the Filing Date have increased the difficulty in achieving the stated KEIP Performance Goals or otherwise added milestones which needed to be accomplished before an Employee could receive full payment of his or her KEIP award.

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[3] Six-month EBITDA targets were chosen to avoid compensating Employees for prior accomplishments and to

11. The Debtors' proposed KEIP Performance Goals are designed to motivate the KEIP participants to maximize value for all of the Debtors' stakeholders (in particular, creditors). Recent modifications to the KEIP Performance Goals have reinforced the link between Employee compensation and creditor recoveries by, for example:

- incorporating defined six-month EBITDA targets for seven separate Arcapita Group portfolio companies into certain KEIP Performance Goals. In aggregate, the KEIP Performance Goal EBITDA targets are <u>approximately 10% higher</u> than the seven portfolio companies' aggregate EBITDA for the last two quarters of 2011;

- adding KEIP Performance Goals for certain participants relating to the Arcapita Group's monetization of specific assets, recoveries from which would flow to creditors;

- conditioning receipt of awards for accomplishment of restructuring milestones on such milestones being accomplished by specific dates, in order to motivate Employees to help consummate the Chapter 11 Cases quickly, minimizing professional costs and other administrative expenses;

- establishing a specific cost reduction goal for one KEIP participant;

- conditioning receipt of certain awards on Employees' ability to minimize the Debtors' exposure to legacy liabilities arising in connection with a few failed investments; and

- adding new KEIP Performance Goals for multiple participants relating to preventing those Employees with direct reporting responsibilities from leaving the Arcapita Group, thereby preventing unintended losses of institutional knowledge.

12. KEIP participants with Financial KEIP Performance Goals are ineligible to receive a KEIP award if the Arcapita Group fails to achieve 90% (or 80% for one non-insider Employee whose Financial KEIP Performance Goal is linked to cost reductions) of the stated Financial KEIP Performance Goal. If the Arcapita Group achieves 90% (or 80% for the one non-insider Employee) of the stated Financial KEIP Performance Goal, the applicable KEIP

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incentivize employees to maximize value while the Debtors were still likely to be in chapter 11.

participant may receive 75% of his or her target KEIP award. If the Arcapita Group achieves 110% (or 120% for the same non-insider) of the stated KEIP Performance Goal, the applicable KEIP participant is eligible to receive 125% of his or her target KEIP award. And, finally, if the Arcapita Group achieves over 90% (or 80%, as applicable) but less than 110% (or 120%, as applicable) of the stated KEIP Performance Goal, the size of the earned KEIP award will be interpolated using straight line interpolation from a 75% payout to a 125% payout.

<u>SELECTION OF KERP AND KEIP PAYMENTS</u>

13. Target incentive payments under the KEIP represent between 3 to 12 months' wages (wages being defined as base salary plus any required subsistence payments). Certain Employees are eligible to receive a greater amount in the event stretch goals are satisfied. KERP awards constitute a lower percentage of the participant Employees' total compensation, primarily because payments to KERP participants are not conditioned on the achievement of specific milestones. Under the KERP, retention payments represent between two to eight months' wages for the KERP participants (wages being defined as base salary plus any required subsistence payments). The median KERP award opportunity is $49,500.

14. After the Debtors had determined the basic structure of the KEIP and the KERP, the Debtors requested that A&M Taxand evaluate the reasonableness of the proposed payments. Utilizing both publicly available information regarding incentive and retention plans and information in its proprietary database, A&M Taxand compared the Continuing Employee Programs to incentive and retention plans adopted by other chapter 11 debtors. As noted in my prior declaration, A&M Taxand concluded potential level of payouts were reasonable and within (if not below) market norms, when considered on a percentage basis.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of June, 2012.

By: /s/ Brian L. Cumberland
Name: Brian L. Cumberland
Title: Managing Director,
Alvarez & Marsal Taxand, LLC