Objection Deadline: October 2, 2012 at 12:00 p.m. (prevailing U.S. Eastern Time)
Hearing Date and Time: October 9, 2012 at 2:00 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

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

DEBTORS' SECOND MOTION FOR ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES

PLEASE TAKE NOTICE that on September 25, 2012, the above-captioned debtors and debtors in possession (the "***Debtors***") filed the annexed *Debtors' Second Motion for Order Extending the Debtors' Exclusive Periods to File a Plan or Plans of Reorganization and To Solicit Acceptances* (the "***Motion***").

PLEASE TAKE FURTHER NOTICE that a hearing (the "***Hearing***") to consider the Motion will take place before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408 (the "***Bankruptcy Court***") on **October 9, 2012 at 2:00 p.m. (prevailing U.S. Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion (the "***Objections***") 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) (the "***Docket***"), pursuant to the Case Management Procedures approved by this Court and the Court's 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 (i) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq., and Matthew K. Kelsey, Esq.); (ii) 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 (iii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.), so as to be received no later than **October 2, 2012 at 2:00 p.m. (prevailing U.S. Eastern Time)** (the "***Objection Deadline***").

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
September 25, 2012

/s/ Michael A. Rosenthal

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

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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**

DEBTORS' SECOND MOTION FOR ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES

Arcapita Bank B.S.C.(c) ("***Arcapita Bank***") and certain of its subsidiaries and affiliates (the "***Debtors***") hereby submit this motion for an order pursuant to section 1121(d) of the Bankruptcy Code further extending the Debtors' exclusive periods to file a plan or plans of reorganization and to solicit acceptances thereof (the "***Motion***").

PRELIMINARY STATEMENT

1. The Debtors' chapter 11 cases (the "***Chapter 11 Cases***") were filed six months ago on an emergency basis with only a few days' notice. The Chapter 11 Cases are significant, unique and complex, representing the first time that a bankruptcy court in the United States has been asked to address a comprehensive restructuring of a Shari'ah-compliant Middle Eastern

entity of any type, much less a Bahraini investment bank. The first months of the Chapter 11 Cases were consumed by efforts to analyze, and then stabilize, the Debtors' business, to educate constituents, the Office of the U.S. Trustee and the Court as to the Debtors' business, to coordinate the Chapter 11 Cases with an ancillary proceeding in the Cayman Islands and to address the numerous and complicated ramifications of a chapter 11 filing by an investment bank that owns or controls over $1.4 billion of portfolio investments[1] in a number of product categories and in locations literally all over the world – from real estate assets in Europe, to infrastructure assets in the U.K., to private equity assets in the U.S., to real estate and infrastructure assets in the Middle East and the Far East.

2. Early in the process, however, the Debtors recognized that they could not afford to languish in chapter 11. So, while the Debtors' management and deal teams in Atlanta, London, Singapore and Bahrain and the Debtor's professionals worked day and night to stabilize the Debtors' business, preserve portfolio values, avoid key employee defections and comply with the Bankruptcy Code's information requirements, the Debtors still managed to advance the Chapter 11 Cases significantly relative to the preparation of a restructuring plan intended to provide an expeditious exit from chapter 11.

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[1] This estimate derives from valuations performed by KPMG LLP, and represents only the value of the subject assets if the subject assets were liquidated at the time of such valuations. The KPMG LLP valuations additionally provide that, should the Arcapita Group maintain its control over its investments and portfolio companies, the value of such investments and portfolio companies would likely grow over time. In addition, for the avoidance of doubt, the valuation cited here is provided to establish the scope of the Debtors' operations. It is not intended to and does not constitute an admission as to the long term value of the Debtors' estates or evidence of any valuation performed in connection with any chapter 11 plan confirmation proceedings.

3. Towards that end, the Debtors have now shared with the Official Committee of Unsecured Creditors (the "***Committee***"), the Cayman Joint Provisional Liquidators, Standard Chartered Bank, the Debtor's only secured creditor ("***SCB***") and the Ad Hoc Murabaha group, the completed KPMG valuation work, the completed new money business plan, the comprehensive investor presentation for the new money plan, and, by the end of this month, will share a standalone business plan. All of these put the Debtors and the other involved constituencies in the position to engage in fruitful, productive and informed discussions about the various options for a successful exit from these Chapter 11 Cases.

4. To allay any concern that the case should not be delayed by further extensions, the Debtors are only asking for 60 days and, if the Motion is granted as requested, the Debtors also agree that they will not seek a further extension of the exclusive period to file a plan of reorganization.

JURISDICTION

5. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

STATEMENT OF FACTS

6. On March 19, 2012 each of the Debtors, other than Falcon, and on April 30, 2012, Falcon, commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

A. The Debtors Were Not Able to Extensively Prepare for Their Bankruptcy Filings

7. As reflected in the Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions and in Accordance with Local Rule 1007-2 [Dkt. No. 6] filed at the inception of these bankruptcy cases, formed in 1996, Debtor Arcapita Bank has its headquarters in Bahrain and also maintains executive offices in Atlanta, London, Hong Kong and Singapore. Through its Debtor and non-Debtor subsidiaries (collectively with Arcapita, the "**Arcapita Group")**, the Arcapita Group is a leading global manager of Shari'ah-compliant alternative investments and operates as an investment bank. Arcapita Bank is not a domestic bank licensed in the United States, and does not have a branch or agency in the United States as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita Bank is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain (the "**CBB**"), which is responsible for maintaining monetary and financial stability in Bahrain.

8. The Arcapita Group provides investors the opportunity to co-invest with the Arcapita Group on a deal-by-deal basis across three global asset classes: real estate, infrastructure, and private equity and venture capital. Typically, the Arcapita Group, through its non-Debtor subsidiaries, takes an indirect 10-20% equity stake alongside its third-party investors in holding companies that directly own operating portfolio companies. The underlying investments made by the Arcapita Group are generally medium to long-term projects that have limited value in the short term and often require significant on-going funding to maximize the potential of the investment and then to realize the value of the matured investment. As of the Petition Date, the Arcapita Group owned or controlled over $1.4 billion of portfolio investments in a number of product categories and in locations literally all over the world – from real estate

assets in Europe, to infrastructure assets in the U.K., to private equity assets in the U.S., to real estate and infrastructure assets in the Middle East and the Far East.

9. Like virtually all private equity institutions and investment banks, the Arcapita Groups was adversely impacted by the global economic downturn, and was especially hard hit by the debt crisis in the Eurozone and upheaval in the Middle East. This global recession also hampered the Arcapita Groups' ability to access the capital markets and resulted in a reduction in asset values (and concomitant difficulties in monetizing certain of the Arcapita Groups' illiquid and complex assets owned by the Debtors' affiliated portfolio companies). As a result, in March of this year, the Arcapita Group lacked the liquidity to repay the "deferred purchase price" on a $1.1 billion unsecured murabaha, Shari'ah-compliant syndicated facility, dated as of March 28, 2007 (the "***Syndicated Facility***") that was to mature on March 28, 2012.

10. In March of 2012, the Debtors' management was engaged in active discussions with the lenders in the Syndicated Facility to restructure and extend the maturity date of the Syndicated Facility. Despite early optimism, one or more hedge funds that were minority participants in the Syndicated Facility sought to leverage their opposition to any restructuring to obtain a buyout at par at the expense of other lenders by threatening precipitous actions that would, if successful, undermine the Debtors' going concern value to the detriment of other creditors and stakeholders. Therefore, the Debtors were unable to achieve the 100% lender consent required to restructure and extend the maturity date of the Syndicated Facility. When negotiations broke down, the Debtors had to move very quickly to file their bankruptcy petitions.

11. The Debtors commenced these Chapter 11 Cases on March 19, 2012 to provide a forum for a global restructuring of their liabilities through a confirmed chapter 11 plan. Simultaneously, to prevent any over-zealous creditors from commencing an involuntary

liquidation in the Cayman Islands, Arcapita Investment Holdings Limited ("***AIHL***"), also a chapter 11 Debtor, commenced a proceeding before the Grand Court of the Cayman Islands ("***Cayman Court***") seeking ancillary relief intended to facilitate these Chapter 11 Cases (the "***Cayman Proceeding***"). The Cayman Court appointed Simon Appell and Gordon McCrae of Zolfo Cooper as joint provisional liquidators (the "***JPLs***").

B. Post-Petition, The Debtors and Their Professionals Were Forced to Perform Tasks Typically Performed Prior to the Petition Date

12. In contrast to most large chapter 11 cases in which the prospective debtors may take months to prepare to file their bankruptcy petitions, here, the Debtors and their professional advisors had only days to prepare. As a result, in the early part of the Chapter 11 Cases, a great deal of time was spent by the Debtors' management, Debtors' counsel, Rothschild Inc. ("***Rothschild***")and Alvarez & Marsal North America, LLC ("***A&M***") on accomplishing tasks normally performed before a chapter 11 filing. This "catch up" work had to be completed before the Debtors and their professionals could even begin to assess the Debtors' assets and formulate a path toward a restructuring plan.

13. In particular, the professionals who had been retained by the Debtors only days before the chapter 11 filings, had to spend considerable time obtaining and analyzing information necessary to understand the Debtors complex business structure and operations, the Debtors complex capital structure and debt layers, and the many legal issues and the unique challenges that lead to the Debtors' need to restructure their business. Much of the information and the personnel required to analyze the Arcapita Groups' business were located at the Debtors' headquarters in Bahrain and also in the Debtors' regional offices in Europe, Singapore and the United States. The Debtors also had to resolve objections to the employment of certain of their professionals who had the obligation to perform the analysis discussed above.

14. In addition to the foregoing, as a result of the Cayman Proceeding, the Debtors and their professionals also met with the JPLs and Cayman counsel to determine how to coordinate the Chapter 11 Cases with the Cayman Proceeding and comply with the requirements and orders of the Cayman Court. Once appointed on April 8, 2012, the Debtors' management and the Debtors' professionals also met with the professionals retained by the Committee and to then accumulate the massive amount of information requested by the Committee's professionals to allow the Committee to also understand the Debtors' business.

C. Post-Petition Actions to Stabilize and Maintain the Debtors' Business and Assets

15. Even while still learning the Debtors' business and structure, the Debtors and its professionals also moved quickly to stabilize and to maintain the Debtors' business and assets and to conserve cash. Actions taken to stabilize and control the Debtors' business included the following:

- Implementation of cost cutting measures including a 35% reduction in force.
- Development and implementation of a key employee incentive plan for senior personnel of the Debtors, a key employee retention plan for critical "rank and file" employees of the Debtors, and a global settlement of certain claims between the Arcapita Group and certain employees.
- Analyses of numerous issues arising under the multitude of agreements governing the Debtors' relationship with investors and lenders, including an extensive analysis of change of control issues and the proxies pursuant to which the Arcapita Group manages portfolio companies and other investments.
- Negotiations with the Committee and the JPLs resulting in an agreement to allow the Debtors to fund $40 million to maintain the Arcapita Group's interest in the Lusail project.
- Negotiation of eight cash management interim orders and related budgets that form the framework for the Debtors to use cash to operate their business and to fund the underlying investments, which included resolution of certain limited objections raised by the Committee without expensive and protracted litigation.
- Resolution of certain objections to the Debtors' retention of Rothschild and Linklaters LLP.

- Analyses of foreign law and enforcement issues including those involving the CBB, issues relating to Cayman law and the Cayman Proceeding, a proceeding in Luxembourg, a proceeding in Poland, and numerous other actions to protect assets and enforce the stay as to creditor entities in foreign jurisdictions who did not initially feel constrained by the Chapter 11 Cases.

- In consultation with the JPL and the Committee, analyzed cash needs and created and refined rolling budgets intended to minimize expenditures, while maintaining and protecting the Debtors' indirect interest in and control of multiple investments which constitute the value of the Debtors' estates and protecting related optionality as to those assets while a reorganization plan is formulated.

- Maintenance of the EuroLog IPO process to preserve the opportunity it presents to maximize value of the related assets.

- Continuation of compliance with the Bankruptcy Code, Cayman law and the orders of this Court (e.g., preparation of schedules and statements, preparation of 2015.3 reports, preparation of monthly operating reports) and keeping all constituencies informed regarding all proceedings.

D. Since the Petition Date, the Debtors Have Taken Extensive Actions Toward a Restructuring

16. Because of the many complex multi-jurisdictional legal and business issues, the Debtors' complex organizational structure, the size and complexity of the Chapter 11 Cases overall, and the time required to learn and then stabilize the Debtors' business, the Debtors knew from the outset that they would need additional time beyond the period provided by Section 1121(d) to obtain valuations and to then formulate and prepare a plan of reorganization.

17. By order dated July 11, 2012, the Court granted the Debtors a 90-day extension of the initial 120-day period during which the Debtors have the exclusive right to file a chapter 11 plan or plans (the "***Exclusive Filing Period***") and the 180-day period to obtain acceptances of that plan or plans (the "***Exclusive Solicitation Period,***" and together with the Exclusive Filing Period, the "***Exclusive Periods***"), through and including October 15, 2012 and December 14, 2012, respectively.

18. Despite the observance of Ramadan from approximately July 20, 2012 until August 18, 2012, the Debtors have used that additional time to make substantial progress toward the preparation of two alternate business plans and a plan of reorganization. However, due to certain unforeseen events, delays by third parties and the sheer complexity of structuring a confirmable Plan, the Debtors require a further extension to complete the extensive work that is now well underway.

E. The Preparation of the KPMG Valuation Reports

19. In April of 2012, the Debtors retained KPMG LLP ("***KPMG***") to value the Debtors' interest in the 27 companies and other portfolio of assets located in several countries, necessary to form the building blocks for the development of a business plan and emergence strategy. The parties originally anticipated completion of the KPMG valuation reports by the middle of July; however, due to the complexity of the assignment, the far flung nature of the information required by KPMG, compliance with third party non-disclosure agreements, the observance of Ramadan, change of control analyses and other issues, the reports were not completed until mid-August 2012. Similarly, "waterfall analyses" as to the distribution of proceeds upon the disposition of each of the investments were not completed until late August.

20. To be able to release the KPMG valuation reports to third parties, KPMG and the Debtors had to obtain "hold harmless" agreements from prospective recipients such as the Committee and the JPLs, and also had to expand and clarify the indemnification obligations of the Debtors to KPMG before KPMG valuation reports could be released to third parties. Releases from non-disclosure agreements with other parties, such as CBRE, also delayed the release of some backup information supporting the KPMG valuation reports. Obtaining the hold harmless agreements and the other releases took far longer than anticipated.

21. With the completion of the KPMG valuation reports, Rothschild, A&M and the Debtors were then able to complete the formulation of alternate business plans and move toward creating one or more plans of reorganizations. As part of the effort, the Debtors also undertook the following tasks:

- Established and populated a data room to facilitate information sharing between the Debtors, the Committee, JPLs, the Debtors' sole secured creditor Standard Chartered Bank, potential future equity investors, and potential DIP lenders.
- Worked to monetize certain assets, including the negotiation and preparation for an initial public offering of the EuroLog assets through the EuroLog IPO.
- Completed a "new money business plan presented to the Committee and the JPLs in meeting in London during the week of September 10, 2012.
- Drafted an alternative "stand alone" plan for monetizing the Debtors' assets over some period of time, which is to be completed by September 30, 2102.
- Initiated negotiations with the Committee, the JPLs and Standard Chartered Bank regarding plan structure issues and related contingencies, including meetings in New York, London and the ongoing dialogue between financial advisors and attorneys retained by the parties.
- Negotiated a "standstill agreement" deferring rent that would otherwise come due as to the Debtors' Manama, Bahrain headquarters pending a negotiated restructuring of the lease to "market rates."
- Completed cash forecasting through a projected emergence date in March 2013 and an analysis of cash needs in excess of present liquidity.
- Located lenders and engaged in negotiations in respect of the first ever Shari'ah compliant debtor-in-possession financing facility and motions for the payment of various fees and expenses (pending Court approval).
- Commenced a comprehensive analysis of potential avoidance actions.
- Developed a global settlement between the Arcapita Group and the six most senior members of the Debtors' management to resolve claims between the parties and to establish restructuring milestones to align management's interests with creditors.
- Identified the need for "validation orders from the Cayman Court as to the DIP and the EuroLog IPO and have been pursuing a process for obtaining those orders, including negotiations with the JPLs to obtain their support.

- Established the August 30, 2012 bar date applicable to general creditors and also a bar date of September 17, 2012 by which governmental entities must file any claims.
- Commenced process of seeking new equity investors with the intent of obtaining commitment letters by October.

22. Despite these considerable accomplishments, the Debtors continue to manage several difficult and complicated work streams, and need additional time past the current deadline of October 15 to complete the work now underway, complete negotiations with potential providers of exit financing, to complete a full and balanced assessment of their possible exit strategies, to complete negotiations with constituents of the estates, and to then file the plan or plans of reorganization now being formulated.

THE DEBTORS REQUEST ONE LAST AND FINAL 60-DAY

EXTENSION OF THE EXCLUSIVE FILING PERIOD

23. To complete the considerable work that is now well underway, the Debtors request a further 60-day extension of both the Exclusive Filing Period through and including December 14, 2012, and the Exclusive Solicitation Period through and including February 12, 2013.

24. Now that the Debtors have the building blocks for negotiation of an exit in place, in this second request for an extension of the Exclusive Periods, the Debtors are willing to truly put themselves (and the other constituents of the estate) to the test. Therefore, if this Motion is granted, the Debtors agree that this will be their last and final request for an extension of the Exclusive Filing Period and that they will not request a further extension past December 14, 2012 to file a plan or plans of reorganization. Meeting this extended deadline will be challenging and will require considerable dedication of the Debtors' management. However, this short deadline has been requested to insure the Court, the Committee, the JPLs and other

creditors that the Debtors are not simply seeking an extension so that they may proceed on a relaxed schedule.

25. To insure there is no waste of time and no danger that the estates may be left with no plan in the event a new equity plan cannot be confirmed because the equity raise proves unsuccessful, the Debtors further commit that, on or before December 14, 2012, the Debtors will file a plan of reorganization that provides, in the same plan document, for the Debtors' emergence from chapter 11 pursuant to (a) a "new money" plan, provided that the new equity infusion is committed and available when the confirmation hearing is held or, if it is not, (b) pursuant to an alternative "stand alone plan" that provides for the managed disposition and distribution of the Debtors' assets (the "***Toggle Plan***").

26. Proceeding as described above ensures that, one way or another, by December 14, either (a) the Debtors will be filing motion to approve a disclosure statement supporting the Toggle Plan, solicitation procedures and a confirmation schedule or (b) exclusivity will automatically terminate and any party may then file a plan.

27. Taking this position does not, by any means, suggest that the Debtors believe that any constituency fares better in a plan "free-for-all" that may arise if exclusivity expires in December. To the contrary, the interests of the parties in these Chapter 11 Cases are so diverse, and the possibility of endless and expensive litigation is so high once exclusivity lapses, that continuing the Exclusive Periods well beyond the additional 60 days requested by the Debtors may make perfect sense. Instead, the agreement by the Debtors not to seek a further extension of the Exclusive Filing Period reflects both the Debtors' confidence in its ability, demonstrated thus far in these Chapter 11 Cases, to press for compromise and agreement, and also the Debtors' recognition that, if it cannot propose a confirmable plan by December 14, 2012, then the

creditors have just resigned themselves to eternal fighting rather than resolution through compromise. Hence, additional extensions of the Exclusive Filing Period and the further hard work of Debtors' management will not resolve those issues.

28. The Toggle Plan represents the most efficient and effective way for the Debtors to exit chapter 11 because it allows the Debtors an opportunity to complete their solicitation of a new equity infusion, while providing for an immediate alternative if the new equity raise is unsuccessful. By pursuing these two alternative paths simultaneously through the Toggle Plan, instead of *seriatim*, the Debtors will be able to pursue the option that the Debtors believe will provide the greatest benefit to creditors without exposing the Debtors' estates to a significantly downside risk if the new equity money does not materialize. In this way, the Toggle Plan prevents wasted time and ensures that the Debtors are not obtaining an extension of the Exclusive Periods to pursue a "hail Mary" plan, the failure of which leaves the Debtor in March of 2013 with no plan and back at square one.

29. The requested 60-day extension of the Exclusive Periods in these large, complex, and difficult reorganization cases involving a worldwide business and multi-faceted legal and business issues is extremely modest compared to the extensions granted in even less complex cases. Based on that complexity alone, the Debtors have shown good cause to extend the Exclusive Periods under section 1121 of the Bankruptcy Code. However, even if the complexity of these Chapter 11 Cases were not enough by itself, based on the Debtors' agreement not to seek a further extension of the Exclusive Filing Period past December 14, 2012 and to file the Toggle Plan within that time, it is beyond dispute that the Debtors have established cause for the 60-day extension requested.

THE RELIEF REQUESTED IS WELL SUPPORTED BY APPPLICABE LAW

30. Pursuant to section 1121(d) of the Bankruptcy Code, the Court may extend the Exclusive Periods for cause. *See* 11 U.S.C. § 1121(d) ("[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section."). Although the Bankruptcy Code does not define "cause" for purposes of section 1121(d), the legislative history indicates that it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963 (Congress intended to give Bankruptcy Courts great flexibility to protect a debtor's interests by allowing a debtor an unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest); *see also Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) ("The hallmark of [section 1121(d) of the Bankruptcy Code] is flexibility.").

31. In exercising its broad discretion, this Court may consider a variety of factors to assess the totality of circumstances underlying a request to extend the exclusive periods of section 1121(d). *See In re Borders Grp., Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) ("The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity."); *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (identifying objective factors that courts historically have considered in determining whether cause exists to extend or terminate exclusivity); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (identifying factors used by courts to determine whether cause exists to extend exclusivity). The factors applied by the courts in analyzing requests to extend the exclusive periods include, but are not limited to:

(i) the size and complexity of the debtor's case;

(ii) the necessity for sufficient time to permit the debtor to negotiate a chapter 11 plan and prepare adequate information;

(iii) the existence of good faith progress towards reorganization;

(iv) whether the debtor is paying its bills as they become due;

(v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

(vi) whether the debtor has made progress in negotiations with its creditors;

(vii) the amount of time which has elapsed in the case;

(viii) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and

(ix) whether an unresolved contingency exists.

Adelphia Commc'ns, 352 B.R. at 587 (the enumerated nine factors are "objective factors which courts historically have considered in making determinations of this character"); *see also Borders*, 460 B.R. at 822 (applying the nine factors set forth in *Adelphia* to hold that debtor established cause to extend exclusivity); *McLean Indus.*, 87 B.R. at 834. No one factor on this non-exhaustive list is dispositive. Rather than merely checking off or mechanically counting which factors apply, courts "tak[e] a broader, more global view — focused on what is best for these chapter 11 cases; most in keeping with the letter and spirit of chapter 11; and what is most appropriate under the unique facts of a case . . . ." *Adelphia Commc'ns*, 352 B.R. at 582.

32. Applying these factors to the facts of these Chapter 11 Cases, and analyzing the totality of the circumstances, it is clear that there is ample cause to grant the Debtors' requested extensions of the Exclusive Periods. The extensions are necessary and appropriate in order for the Debtors to have the opportunity contemplated by the Bankruptcy Code to propose a chapter 11 plan and solicit acceptances of that plan. To terminate the Exclusive Periods in these Chapter 11 Cases at this time, when the Debtors have already delivered a business plan and are

in the process of negotiating an exit strategy, would defeat the very purpose of section 1121(d) of the Bankruptcy Code.

33. Bankruptcy courts in this district have, on numerous occasions, granted second requests by debtors to extend their exclusive periods, often for much longer periods than requested here and based on less compelling facts. *See, e.g.*, *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. July 19, 2012) [Dkt. No. 3635] (second extension of 3 months); *In re Tronox Inc., et al.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Sept. 16, 2009) [Docket No. 706] (second extension of 5 months); *In re Frontier Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Jan. 21, 2009) (second extension of 120 days); *In re Lehman Brothers Holdings Inc., et al.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Jan. 15, 2009) [Docket No. 4449] (second extension of 8 months); *In re Delta Air Lines, Inc.*, No. 05-17923 (ASH) (Bankr. S.D.N.Y. Jan. 12, 2006) (second extension of 120 days).

34. A creditor cannot oppose an extension of the exclusive periods because it does not like the plan under preparation and a creditor's displeasure with the anticipated plan or its unhappiness with a debtor's plan proposals to date is *not* a basis to deny an extension of the Exclusive Periods. *See Adelphia Arahova Motions Decision*, 336 B.R. at 676 & n. 183 ("the notion that creditor constituency unhappiness, without more, constitutes cause to undermine the debtor's chances of winning final confirmation of its plan during the exclusivity period has been judicially rejected"), citing *In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 134 (D.N.J.1995). *See also In re Eagle-Picher Industries, Inc.*, 176 B.R. 143 (Bankr. S. D. Ohio 1994) (The Court refused to terminate exclusivity where there was no evidence of undue delay or that the continuation of exclusivity was being used as a tactical device to put pressure on creditors to accept a plan they disliked.)

35. In ruling on a motion to extend the Exclusive Periods, the Court should analyze the practical consequences of granting the extension requested as compared to consequences of terminating a debtor's exclusive right to file a plan. "When the Court is determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward. And that is a practical call that can override a mere toting up of the factors." *In re Dow Corning Corp.,* 208 B.R. 661, 670 (Bankr. E. D. Mich.1997); *see also Adelphia*, 352 B.R. at 590 (agreeing with *Dow Corning*, but reasoning that "the test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case").

A. Cause Exists to Extend the Exclusive Periods in These Cases

i. The Size and Complexity of These Cases Necessitate Additional Time to Permit the Debtors to Negotiate and Propose a Chapter 11 Plan

36. As Congress has expressly recognized, courts will likely extend the Exclusive Periods if a debtor's case is unusually large or complex. H.R. Rep. No. 95-595, at 231, 232, 406 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191, 6362 ("[I]f an unusually large company were to seek reorganization under Chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement.").

37. No one can dispute that these Chapter 11 Cases are both large and complex. Many of the Debtors' subsidiaries and affiliates have complicated corporate structures to facilitate Shari'ah-compliant investments. Accordingly, the Debtors received an extension of time to file certain of their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statement of financial affairs. In each instance, the Debtors complied with the extended deadlines.

38. The Debtors established August 30, 2012 and September 17, 2012 as the claims bar dates (the "***Bar Dates***") for all private creditors and governmental units respectively, and a multitude of claims were filed. The recent occurrence of the Bar Dates alone would support an extension of the Exclusive Periods, especially given the need to understand the competing claims of certain creditors as to Arcapita Bank versus the claim of others as to AIHL. Without an extension of the current Exclusive Periods, the Debtors will not have an adequate opportunity to evaluate these competing claims and to structure a compromise between the creditor constituencies of Arcapita Bank versus AIHL.

39. Adding to the complexities presented by these Chapter 11 Cases themselves, the parallel proceedings in the Cayman Islands as to AIHL will require coordinating any plan proposed in the Chapter 11 cases with a "scheme" approved by the Cayman Court or otherwise obtaining "validation orders" from the Cayman Court to allow the terms of the chapter 11 plan to be performed and enforced as to third parties.

ii. The Debtors Have Made Substantial, Good-Faith Progress Towards Reorganization, Including Developing Their Business Plan and Sharing It With the Committee

40. As described above, after spending the initial months following the filing of these Chapter 11 Cases analyzing and stabilizing the Debtors' business, the Debtors have spent the last several months making significant strides towards reorganization. Notably, the Debtors obtained and shared the KPMG valuation reports with the Committee and the JPL, completed a preliminary business plan, and have initiated negotiations with the Committee. The discussions are still in their nascent stages and additional time is necessary to formulate a consensual plan.

41. This second request for an extension of the Exclusive Periods brings the aggregate requested extension to 150 days and would not unduly prolong the Chapter 11 Cases. The Debtors' initial extension of the Exclusive Periods requested only an additional 90 days. The

initial modest extension has not afforded a meaningful opportunity for the Debtors to propose and file a chapter 11 plan. This second request for a 60-day extension is comparatively short and is reasonable given the size and complexity of the Chapter 11 Cases. "A reasonable time in light of the bankruptcy case in its entirety is the root consideration." *McLean Indus.,* 87 B.R. at 834. Indeed, since the Debtors have agreed that they will not seek a further extension past December 14, 2012 and have committed to file a "Toggle Plan," extending Exclusive Periods as requested by the Debtors will clearly move the case forward and will not simply delay the case.

iii. The Debtors Require an Extension of the Exclusive Periods to Maximize the Value of the Debtors' Estates

42. The requested final extension of the Exclusive Periods will allow the Debtors the best opportunity to maximize the value of their estates without prejudice to the rights any of the interested stakeholders. The Debtors are in the best position to develop strategies to maximize the value of assets that were intended to be long-term investments, to reconcile the varying, and sometimes disparate, interests of creditors and to create a plan of reorganization that maximizes value for all stakeholders based upon the recently completed KPMG valuation reports. Plus, the "Toggle Plan" prevents delay by providing for automatic alternative relief to the extent the new equity raise proves unsuccessful.

iv. The Debtors Have, and Will Continue to, Pay Post-petition Administrative Expense As They Come Due

43. Courts considering a request for the extension of exclusivity also may assess a debtor's liquidity and solvency. *See Adelphia Commc'ns*, 352 B.R. at 587. Since filing these Chapter 11 Cases, the Debtors have taken numerous affirmative steps towards a successful rehabilitation of their business. Through prudent business decisions and cash management, the Debtors are ahead of budget and have sufficient resources to pay all required post-petition administrative expenses in a timely fashion, and will continue to do so. However, the Debtors

anticipate the need for debtor-in-possession financing to provide adequate liquidity through the first quarter of 2013 in order to maximize the value of the Debtors assets under either a new money plan or standalone plan.

NOTICE

44. No trustee or examiner has been appointed in these Chapter 11 Cases. 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) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan 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.

SECOND REQUEST TO EXTEND THE EXCLUSIVE PERIODS

45. This is the Debtors' second request for an extension of the Exclusive Periods. By order dated July 11, 2012, the Court granted the Debtors a 90-day extension of the initial 120-day Exclusive Filing Period and the 180-day Exclusive Solicitation Period**,** through and including October 15, 2012 and December 14, 2012 respectively. The Order entered on July 11, 2012 was without prejudice to the Debtors right to seek further extensions of the Exclusive Periods.

CONCLUSION

For the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, extending the Debtors' Exclusive Filing Period for filing a plan or plans or reorganization through and including December 14, 2012, extending the Exclusive Solicitation Period to obtain acceptances of the plan or plans through and including February 12, 2013, and granting the Debtors such other and further relief as is just and proper. If this Motion is granted as requested, the Debtors will not seek a further extension of the Exclusive Filing Period.

Dated: New York, New York
September 25, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

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**

ORDER GRANTING DEBTORS' SECOND MOTION FOR ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES

Upon consideration of the Motion (the "***Motion***")[2] of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession herein (collectively, the "***Debtors***" and each, a "***Debtor***"), for entry of an order pursuant to section 1121(d) of title 11 of the United States Code (the "***Bankruptcy Code***") extending the Debtors' exclusive periods to file a plan or plans of reorganization (the "***Exclusive Filing Period***") and to solicit acceptances thereof (the "***Exclusive Solicitation Period***") and the evidence in support thereof; the Court finds that:

a.) It has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334;

b.) Venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409;

c.) Notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances of these cases; and,

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

d.) The relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

After the consideration of any objections to the Motion, the arguments of counsel in support of and in opposition to the Motion presented at the hearing before the Court (the "***Hearing***"); all proceedings that have occurred before the Court in these Chapter 11 Cases; and having determined after due deliberation that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein.

2. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Filing Period in which to file a chapter 11 plan or plans is extended to and including December 14, 2012.

3. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Solicitation Period in which to solicit acceptances of their chapter 11 plan or plans is extended to and including February 12, 2013.

4. The extension of the Exclusive Solicitation Period to February 12, 2013 granted herein is without prejudice to such further requests to extend the Exclusive Solicitation Period that may be made by the Debtors or any party in interest; provided, however, that as agreed by the Debtors, the Debtors shall not request a further extension of the Exclusive Filing Period beyond the extension to December 14, 2012 granted herein.

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

Dated: New York, New York
_____, 2012

_____
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE