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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.), <i>et al.</i> ,	: Case No. 12-11076 (SHL)
	:
Debtors.	: Jointly Administered
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**STANDARD CHARTERED BANK’S LIMITED OBJECTION AND RESERVATION  
OF RIGHTS TO THE DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO ENTER INTO A FINANCING COMMITMENT  
LETTER AND INCUR RELATED FEES, EXPENSES AND INDEMNITIES**

Standard Chartered Bank (“**Standard Chartered**”), through its undersigned counsel, hereby asserts this limited objection and reservation of rights (this “**Limited Objection**”) to the *Motion For Entry of an Order Authorizing the Debtors to Enter Into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities* [Dkt. No. 513] (the “**Commitment Motion**”) filed by the above-captioned debtors and debtors in possession (the “**Debtors**”) and respectfully represents and states as follows:<sup>1</sup>

<sup>1</sup> By filing this Limited Objection, Standard Chartered is not acknowledging the propriety of these chapter 11 cases or that the Court should continue to exercise jurisdiction over each of the Debtors. Standard Chartered reserves the right to request that the Court dismiss, or abstain from, these chapter 11 cases.

1. On September 12, 2012, Standard Chartered filed a reservation of rights [Docket No. 476] with respect to the Debtors' *Motion for an Order Approving Expense Reimbursement in Connection with Prospective Post-Petition Financing* [Docket No. 448]. To address Standard Chartered's reservation, at the hearing to approve the expense reimbursement on September 19, 2012, counsel to the Debtors, after noting that Standard Chartered asserts a security interest over the shares of Arcapita LT Holdings Limited, AEID II Holdings Limited, WindTurbine Holdings Limited, and RailInvest Holdings Limited (collectively, the "**SCB Subsidiaries**"),<sup>2</sup> "confirm[ed] that it is not presently [the Debtors'] intention to prime any of [Standard Chartered's] four positions with -- in connection with debtor in possession financing." Hrg. Tr. 6:12-15 (Sept. 19, 2012) [Docket No. 524]. As of the date of that hearing, the Debtors had not shared the terms of any potential post-petition financing with Standard Chartered.

2. On September 25, 2012, the Debtors filed the Commitment Motion, seeking this Court's approval of the Debtors' entry into a commitment letter (the "**Commitment Letter**") with Silver Point Finance, LLC ("**Silver Point**"), and incur related fees, expenses and indemnities. Under the Commitment Letter, subject to certain contingencies including the completion of due diligence, Silver Point commits to extending a US\$150 million Shari'ah compliant debtor-in-possession murabaha facility (the "**Silver Point DIP Facility**") to the Debtors. The Silver Point DIP Facility, while technically taking a junior lien on the shares of the

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<sup>2</sup> Standard Chartered is the Debtors' sole secured creditor and the sole creditor of the SCB Subsidiaries under two US\$50,000,000 secured Shari'ah-compliant murabaha facilities (the "**SCB Secured Facilities**"). The obligations under the SCB Secured Facilities are secured by eight equitable mortgages over the shares (the "**SCB Mortgages**") of each of the SCB Subsidiaries. The SCB Mortgages create express trusts for the benefit of Standard Chartered under Cayman Islands law with respect to all dividends and other distributions made on or in respect of the mortgaged shares or any thereof. Standard Chartered's rights, claims and security interests with respect to the Debtors is described in detail in prior pleadings filed by Standard Chartered and in the proofs of claim filed by Standard Chartered in these cases.

SCB Subsidiaries, would receive guaranty claims and administrative claims against each of the SCB Subsidiaries (the “**Senior Claims**”) and Silver Point appears to have the right to receive security over all material non-Debtor assets of the Arcapita group, including the assets of each of the SCB Subsidiaries (the “**Senior Security**”).<sup>3</sup>

3. Despite the Debtors’ statements to the Court (which were relied upon by Standard Chartered) that the proposed Silver Point DIP Facility would not prime Standard Chartered’s positions, that is exactly what the Senior Claims and the Senior Security do. In addition, the Silver Point DIP Facility does not provide any adequate protection to Standard Chartered even though it purports to structurally prime Standard Chartered’s secured interests. Standard Chartered has informed the Debtors that it intends to object to the Debtors’ motion to approve the Silver Point DIP Facility, which Standard Chartered believes cannot be approved by this Court as currently proposed. Absent consensual resolution of Standard Chartered’s objections, the motion to approve the Silver Point DIP Facility and Standard Chartered’s objection thereto will require a full evidentiary hearing involving expert valuation testimony.

4. In addition to this insurmountable deficiency, the Silver Point DIP Facility proposes to be a single draw facility notwithstanding the fact that the Debtors do not have an immediate need for the full facility. This is a blatant attempt to extract as much financial gain as possible at the expense of the Debtors’ estates and to accelerate the approval of the full Silver Point DIP Facility so that parties in interest, including Standard Chartered, will have as little time as possible for appropriate document and deposition discovery and preparation for the valuation

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<sup>3</sup> The Debtors’ statement in footnote 9 of their Commitment Motion that “[i]t is anticipated that no liens shall be provided under the Proposed Transaction with respect to the assets of RailInvest, AEID II Holdings Limited or Windturbine Holdings Limited” is not reflected in the Commitment Letter, which leaves Standard Chartered with little comfort. Moreover, this statement is a nullity in light of the administrative claims against the SCB Subsidiaries that the Debtors are seeking to grant to SilverPoint under the SilverPoint DIP Facility.

trial that will be required if the Debtors insist on moving forward with a defective financing proposal.

5. In the Commitment Motion currently before the Court, the Debtors are seeking Court approval of the Commitment Letter and the Debtors' agreements thereunder, including the obligation to pay up to 100% of Silver Point's expenses and a commitment fee of at least US\$1.125 - \$2.25 million. Standard Chartered objects to the Commitment Motion to the extent that the approval of the Commitment Letter would by extension approve or be considered to approve any of the terms of the Silver Point DIP Facility or the Debtors' entry into the Silver Point DIP Facility.

WHEREFORE, for the foregoing reasons, Standard Chartered respectfully requests that the Court (a) deny the Motion unless the order expressly provides (i) that neither the Debtors' entry into the Silver Point DIP Facility nor any the terms of the Silver Point DIP Facility are being approved and the entry of the order shall not be considered to constitute such approval and (ii) that all of Standard Chartered's rights and objections with respect to the Silver Point DIP Facility are reserved, and (b) grant Standard Chartered such other and further relief as the Court deems appropriate.

Dated: New York, New York  
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DECHERT LLP

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