Hearing Date: October 9, 2012 at 2:00 p.m. (Prevailing Eastern Time)

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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)**

STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS WITH RESPECT TO DEBTORS' SECOND MOTION TO EXTEND EXCLUSIVE PERIODS

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita Bank") and the other debtors in possession in the above-captioned jointly administered chapter 11 cases (the "Debtors") files this statement with respect to the *Debtors' Second Motion for Order Extending the Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances* [Docket No. 509] (the "Motion"),[1] and respectfully states as follows:

STATEMENT

1. The Debtors are investment vehicles. They are holding companies. Not one of them is an operating company. The Debtors' assets consist principally of equity

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

investments in various stand-alone businesses.[2] Thus, these cases require no operational turnaround. There are no unions with collective bargaining agreements that need to be modified, no decisions to be made as to which executory contracts and unexpired leases to assume and which to reject, and no legacy costs that are swamping the companies' finances. What the company requires is simply a balance sheet restructuring. No reason exists to delay the filing of a plan that would allow the Debtors to emerge promptly from chapter 11 protection. To the contrary, any further delay is prohibitively costly.

2. At the commencement of these cases, the Debtors predicted that they would not require any debtor in possession financing. That prediction proved to be incorrect. Since filing for bankruptcy, the Debtors have focused on trying to sell the potential upside in their assets to unidentified third party investors on terms that the Committee believes are likely too favorable to those investors to gain unsecured creditor approval. Despite the Debtors' depiction in the Motion of their purported achievements over the past six months, the reality of these cases is bleak. The Debtors make much of the time and effort they have devoted to valuing their subsidiaries, formulating a business plan, and seeking to raise equity commitments that have not materialized. The Debtors have undoubtedly toiled in pursuit of these objectives. The cash burn that has accompanied those efforts demonstrates that the Debtors have already enjoyed ample opportunity to pursue reorganization. Moreover, they have done so without the input of the Committee or any meaningful segment of the Debtors' creditor population.

3. The Committee is disappointed that the Debtors are not much closer to an agreed plan after six months of exclusivity spent languishing in chapter 11. These cases have

[2] The Debtors assert that, according to the KPMG reports, their assets are worth over $1.4 billion. The Committee believes that the asset values are significantly less than the $2.6 billion of unsecured claims reflected in the Debtors' Schedules of Assets and Liabilities.

become unnecessarily complicated by the creation of legal issues that need never have arisen (i.e., those related to debtor in possession financing), erosion of cash reserves, and incurrence of additional secured obligations. At the same time, absolutely no meaningful progress has been made towards addressing the only issues that must be resolved in order for the Debtors to emerge from chapter 11, *i.e.,* the allocation of value between the creditors of Arcapita Bank and AIHL.

4. The Debtors' aversion to addressing these key issues is on full display in the Motion. The Debtors assert that "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." (Motion ¶ 27.) Nonetheless, the Debtors agree this must be their final request to extend the Exclusive Periods because if they "cannot propose a confirmable plan by December 14, 2012, then the creditors have just resigned themselves to eternal fighting rather than resolution through compromise." (Id.)

5. More than six months into these cases, the Debtors have not made ***any*** meaningful effort to negotiate with the Committee on the terms of a chapter 11 plan. Out of an apparent belief that the Debtors' creditor constituencies are destined for irreconcilable conflict, the Debtors have chosen instead to focus their efforts on talking to third party investors in the hope that the intercreditor issues among prepetition creditors will simply disappear. The competing interests of creditors in these cases can and will be resolved without "eternal fighting," just as they are in all other cases, and the prospect of "endless and expensive litigation," scary as it may be, fails to support the requested extension of exclusivity. (Id.)

6. While the intercreditor issues in these cases will undoubtedly require negotiation to produce a consensual resolution, the allocation dispute is solvable. In fact, the

Committee expects that an equitable resolution will be reached without material delay as soon as parties in interest are able to get a clear picture of the path forward for the Debtors' estates. This simply will not be possible so long as the Debtors continue to focus their efforts on marketing equity to third parties on undisclosed terms, while denying the Debtors' creditors the opportunity for a realistic alternative resolution to these cases.

7. As the sole fiduciary to the unsecured creditors of each of the Debtors, whose membership includes some of the largest creditors of both Arcapita Bank and AIHL, the Committee is in the best position to play a key role in resolving potential intercreditor disputes that have scared the Debtors to the point of distraction. As soon as a reasonable and realistic plan for distribution of the Debtors' assets can be agreed upon, the Committee is well positioned to broker an agreement among the relevant creditor constituencies using probability weighted assessments of litigation to resolve the intercreditor issues. While such an outcome will not ensure the Debtors' management a going-forward role, it is the most likely to result in an expeditious and value-maximizing restructuring of the Debtors.

8. At the initial exclusivity hearing, the Debtors informed the Court that they would satisfy a number of milestones during the summer relating to procuring new money commitments and negotiating a plan with the Committee.[3] As a result of missing each of these milestones, while refusing to abandon the continuing search for third party investments, the Debtors will tarry longer in chapter 11 than necessary, while their cash reserves continue to dwindle. The Committee is deeply concerned that the Debtors are neglecting the possibility of

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[3] Those milestones included: (i) sharing a stand-alone business plan with the Committee by the end of August (Omnibus Hr'g Tr. 25:15-19 (June 26, 2012) [Docket No. 285])); (ii) providing bi-weekly disclosures of the nature and number of potential new equity investors (Id. at 26:1-10); (iii) providing details of the terms of the new equity raise (Id. at 26:11-16); and (iv) completing the KPMG valuation reports by the end of July (Id. at 24:24 – 25:6).

preserving value available for the benefit of their creditors through a controlled liquidation of their assets. Given the necessity of creditor approval for any equity raise and the fact that this endeavor is being funded directly from the Debtors' unsecured creditors' recoveries, the Debtors' insistence on a new money plan appears risky at best and, potentially, misguided. The Committee believes that the cash burn must be stopped by the Debtors exiting bankruptcy as soon as possible.

9. At this stage of the cases, the Committee firmly believes that the best way to accomplish that goal requires the Debtors to abandon their efforts to raise third party equity investments unless commitments materialize immediately and on acceptable terms. The Debtors' unsecured creditors, who are the residual stakeholders in these cases, are entitled to see immediately the results of the material investment they have been forced to make, without their consent, in the Debtors' equity raising process. If the Debtors' efforts have not borne fruit, then the "jig is up," and the Debtors must move to confirm a long overdue controlled wind-down plan. Too much time and value has already been lost.

SETTLEMENT

10. The Committee has negotiated an arrangement with the Debtors that puts a firm expiration date on the Debtors' ability to continue to search for equity commitments (the "Settlement"). Specifically, the Debtors and the Committee have agreed to the following terms, on the basis of which the Committee will not oppose a final extension of the Debtors' exclusive period to file a chapter 11 plan to December 15, 2012:

- By November 1, 2012, the Debtors must have "new money" equity commitments of at least $250 million, which funds shall have been deposited into escrow in New York or an irrevocable letter of credit from a money center bank located in New York or London (or other banks mutually

acceptable to both the Debtors and the Committee) in the name of one or more of the Debtors.[4]

- If the $250 million threshold is met by November 1, 2012 as provided above, then the escrowed "new money" equity cash on deposit as of November 1, 2012 will not be released from escrow without prior Committee consent or Court approval, *provided however*, that if the "new money" plan is abandoned because (i) the $250 million threshold is not met by November 1, 2012, (ii) additional funds are deposited after November 1, 2012, but ultimately not enough money is raised in total to make the "new money" plan confirmable, or (iii) for any other reason, then the "new money" cash (or letters of credit) on deposit may be released from escrow by agreement of the Debtors and the depositor and without the consent of the Committee. If the new money plan has not been abandoned, and provided that the cash or letters of credit on deposit in escrow total at least $250 million, the consent of the Committee is not required to cause the release of any amount in excess of $250 million.

- The Debtors shall have entered into an agreement with the Committee, which reflects the consent of the providers of proposed "new money" equity commitments deposited in escrow or subject to a letter of credit (as described above) as of November 1, 2012, that at least 75% of the funds deposited into escrow or by letter of credit by November 1, 2012 will be earmarked for distribution to the Debtors' prepetition unsecured creditors holding allowed claims under a chapter 11 plan.

- If the Debtors fail to satisfy any of the preceding conditions, or to obtain Committee consent otherwise, commencing by no later than November 1, 2012, the Debtors will immediately and exclusively seek to negotiate with their creditors a chapter 11 plan contemplating an orderly wind-down of their businesses and assets.

- Exclusivity will expire with prejudice on December 15, 2012 if the Debtors have not filed a plan as of that date. The Debtors will not seek any further extensions of their exclusive right to file a plan. If the Debtors file a plan by December 15, 2012, they reserve the right to seek further extensions of the Exclusive Solicitation Period, *provided however,* that the Committee reserves the right to object any such requests on any grounds.

- The Debtors will immediately begin good faith discussions with the Committee and other parties in interest regarding a plan that provides for an orderly wind-down of their businesses and assets.

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[4] The "new money" deposits and letters of credit shall be subject to the terms of a commitment letter or other agreement setting forth conditions precedent to the use and application of the money in exchange for equity in the reorganized Debtors.

11. The Settlement will ensure that the expense associated with the Debtors' pursuit of a reorganization funded by new money equity investors will come to an end unless they produces tangible (i.e., funded) commitments in the very near term. Based on the Debtors' track record to date, the Committee is skeptical that the Debtors will meet these targets. The Debtors' pursuit of this plan for up to 120 additional days without firm commitments is simply too risky, and the costs are too large for the unsecured creditors to continue to bear.[5]

12. To be clear, the Committee's agreement to the Settlement is not an endorsement of the Debtors' proposed equity raise or the terms on which any such investment may be committed. Despite the Committee's repeated requests for information, the Committee has not been privy to the Debtors' equity raising process and has had virtually no visibility into the specific terms on which the Debtors are seeking to raise new equity capital.

13. Any serious discussion of a new money plan can only occur if the Debtors are able to deliver concrete proof that funds have materialized. Absent such a showing, the Debtors must pull the plug on the equity raising efforts to focus exclusively on negotiating a standalone wind-down plan. Alternatively, even if the Debtors are able to raise sufficient funded "new money" equity commitments, only then can a discussion on the terms of the Debtors' new money plan begin in earnest and, consistent with its fiduciary duties to the Debtors' unsecured creditors, the Committee reserves all rights to evaluate, negotiate and, potentially, reject any proposed arrangements that the Debtors or the new money investors have tied to the funds raised.

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[5] The Debtors have stated that "[t]his 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." (Motion ¶ 41.) This statement is misleading. In reality, absent the Settlement, if the Debtors were to file any plan by December 14, 2012, then no other party would be able to file a plan until at least February 13, 2012, thus, bringing the "aggregate requested extension" to 270 days.

Dated: New York, New York
October 4, 2012

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