

Marvin R. Lange (ML1854)
 Stephen B. Crain (admitted *pro hac vice*)
 William A. (Trey) Wood III (admitted *pro hac vice*)
 Edmund W. Robb IV (admitted *pro hac vice*)
 Jason G. Cohen (admitted *pro hac vice*)
 BRACEWELL & GIULIANI LLP
 1251 Avenue of the Americas, 49th Floor
 New York, New York 10020
 Telephone: (212) 508-6100
 Facsimile: (212) 508-6101

*Counsel to Tide Natural Gas Storage I, LP
 and Tide Natural Gas Storage II, LP*

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

	§	
IN RE:	§	
	§	Chapter 11
ARCAPITA BANK B.S.C.(c), et al.,	§	
Debtors.	§	Case No. 12-11076-shl
	§	Jointly Administered
	§	
IN RE:	§	
	§	Chapter 11
FALCON GAS STORAGE CO., INC.	§	
Debtor.	§	Case No. 12-11790-shl
	§	(Jointly Administered under
	§	Case No. 12-11076)

**TIDE’S OMNIBUS LIMITED OBJECTIONS AND RESERVATION OF RIGHTS WITH
 RESPECT TO PROFESSIONAL INTERIM FEE APPLICATIONS**

Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP (together, “Tide”), by their undersigned counsel, respectfully file the following limited objections and reservation of rights with respect to the second interim fee applications of Houlihan Lokey Capital, Inc. [Dkt. No. 667]; Milbank, Tweed, Hadley & McCloy LLP [Dkt. No. 666]; KPMG LLP [Dkt. No. 664]; King & Spalding LLP and King & Spalding International LLP [Dkt. No. 663]; Walkers [Dkt.

No. 662]; Gibson, Dunn & Crutcher LLP [Dkt. No. 660]; Linklaters LLP [Dkt. No. 651]; KPMG LLP (US) [Dkt. No. 649]; Trowers & Hamlins [Dkt. No. 647]; Rothschild Inc. and N M Rothschild & Sons Limited [Dkt. No. 671]; Alvarez & Marsal North America, LLC [Dkt. No. 672]; Mourant Ozannes [Dkt. No. 675]; FTI Consulting, Inc. [Dkt. No. 673] and Hassan Radhi & Associates [Dkt. No. 674]; and the first interim fee application of Ernst & Young [Dkt. No. 638]. In support thereof, Tide respectfully submits as follows:

I. PRELIMINARY STATEMENT

1. The Debtor Falcon Gas Storage Co., Inc. ("Falcon") is a non-operating entity with no employees and no cash flow. Other than a possible claim against its parent, Arcapita Bank B.S.C. (C.) ("Arcapita"), Falcon's only asset appears to be a disputed, alleged interest in \$70 million that currently is in escrow at HSBC Bank USA, N.A. Those escrow funds are the subject of a lawsuit that has been proceeding in the United States District Court for the Southern District of New York for almost two years. Tide asserts that it owns the \$70 million in escrow and that these funds are not property of the Debtors' estates.

2. The services performed by the fourteen (14) estate professionals fall into three general categories: (1) services that do not apply to nor benefit Falcon's estate in any way; (2) services that are performed predominantly for Arcapita and its other affiliated Debtors and that benefit Falcon's estate only tangentially (if at all); and (3) services that are performed predominantly for Falcon's estate but that are grossly disproportionate to the fees incurred, results and benefits obtained, and amount of activity in Falcon's case. While Tide understands that Falcon's parent company, Arcapita, is currently paying the professional fees incurred by the jointly-administered debtor estates, Tide objects to the extent that (1) fees incurred by the Debtors' professionals in the first category will be allocated to Falcon's estate at all, (2) fees incurred by the Debtors' professionals in the second category will be allocated to Falcon's estate

on any basis other than commensurate with the benefit to Falcon's estate and (3) fees incurred by the Debtors' professionals in the third category are unreasonable and/or incurred for the benefit of entities other than Falcon (namely, Arcapita).

II. RELEVANT BACKGROUND

3. Tide is the plaintiff in civil action number 10-CIV-5821 (KMW), which is currently pending in the United States District Court for the Southern District of New York (the "District Court Action"). Falcon, Arcapita, and Arcapita, Inc. are defendants in the District Court Action. The escrow agent, HSBC Bank USA, N.A, is a nominal defendant.

4. On March 19, 2012, Arcapita, Arcapita LT Holdings Limited, Arcapita Investment Holdings Limited ("AIHL"), WindTurbine Holdings Limited, AED II Holdings Limited, and RailInvest Holdings Limited filed for protection under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

5. On March 21, 2012, Arcapita filed a Suggestion of Bankruptcy in the District Court Action.

6. On April 5, 2012, an official committee of unsecured creditors (the "Committee") was appointed, which is comprised mostly of financial institutions based in Europe, the Middle East, and the United States. (See Dkt. No. 60). Upon information and belief, none of the Committee members are direct creditors of Falcon's estate.

7. On April 26, 2012, Tide filed a motion to sever Arcapita from the District Court Action so that Tide could continue to prosecute its claims against Falcon.

8. On April 30, 2012, Falcon filed its petition for relief under chapter 11 of the Bankruptcy Code.

9. On June 25, 2012, Tide filed a Motion for an Order Lifting the Automatic Stay Pursuant to 11 U.S.C. Section 362(d) to Allow Continuance of District Court Action [Dkt. No.

279] (the “Lift Stay Motion”). The Court ordered Tide, Falcon, and Arcapita to mediation, which took place in New York City on December 4, 2012. Mediation was not successful, and a scheduling conference concerning the Lift Stay Motion is scheduled to take place on December 18, 2012.

10. The District Court Action arises out of Falcon and its controlling affiliates’ misrepresentations to Tide in connection with a half-billion dollar transaction for the sale of a natural gas storage business called “NorTex Gas Storage Company, LLC” (“NorTex”), a former subsidiary of Falcon. In connection with the closing of the NorTex transaction, \$70 million of that purchase price was placed in escrow with HSBC Bank USA, N.A., where the funds remain today. Following the sale of NorTex, Falcon was left with no operations, employees or cash flow, and Falcon’s only significant property (other than an apparent claim against Arcapita) is a disputed, alleged interest in \$70 million of escrowed funds. Falcon has no ongoing business to reorganize.

11. In contrast, Arcapita is a massive and complicated investment vehicle, subject to Islamic banking rules and principles, with offices in Atlanta, London, Hong Kong, Singapore and Bahrain. Arcapita, through its Debtor and non-Debtor subsidiaries, has approximately \$7 billion in assets under management, \$3.06 billion in assets owned, and liabilities of \$2.55 billion. As a debtor in possession in chapter 11, Arcapita continues to operate its international enterprise by managing “assets located throughout the world, including the United States, the Middle East, Europe and Asia.” (Declaration of Henry A. Thompson ¶ 27, Dkt. No. 6, Case No. 12-11076). “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 capital funding to complete in order to realize the value of the investment.” (Id. at ¶ 7).

12. Because of the complex nature of its business, Arcapita and the Committee have retained advisors that specialize in international law and/or finance, or that perform services exclusively for Arcapita's investment banking and asset management sectors, and that do not perform services for Falcon's estate (the "First Category Professionals").¹

13. In addition, the size and complexity of Arcapita's corporate structure has necessitated Arcapita's retention of professionals that perform services primarily for Arcapita and for whom work allegedly pertaining to Falcon represents a minute portion of services rendered (the "Second Category Professionals").²

14. Finally, the Debtors have retained King & Spalding LLP and King & Spalding International LLP as special counsel ("King & Spalding"). King & Spalding represents Falcon and Arcapita in the stayed District Court Action, and its services for Falcon and Arcapita post-petition include work on the District Court Action, the Lift Stay Motion, preparation for mediation, and substantial work for Arcapita's non-debtor affiliates. (See Dkt. Nos. 149, 315, 411, 663). During the first interim period, King & Spalding incurred \$637,557.58 in fees and expenses; King & Spalding indicates that \$243,796.00 represents work concerning the Falcon/Tide litigation. (See Dkt. No. 411). During the second interim period, King & Spalding incurred \$584,910.29 in fees and expenses, \$425,167.00 in fees for work allegedly concerning the Falcon/Tide litigation. (See Dkt. No. 663). King & Spalding has thus incurred \$668,963.00

¹ The First Category Professionals are: Linklaters LLP (special counsel to Debtors with respect to Shari'ah compliant financing and international law), Trowers & Hamblins (Bahraini counsel to the Debtors), Mourant Ozannes (Cayman Islands counsel to the Debtors), Ernst & Young (auditor for the Debtors), Walkers (Cayman Islands counsel to the Committee), Hassan Radhi & Associates (Bahraini counsel to the Committee), Rothschild Inc. and N M Rothschild (financial advisor to the Debtors), KPMG UK LLP (valuation advisor to the Debtors), KPMG LLP (US) (tax consultants to the Debtors), and Houlihan Lokey Capital, Inc. (financial advisor to the Committee).

² The Second Category Professionals are: Gibson, Dunn & Crutcher LLP (Debtors' counsel), Alvarez & Marsal North America, LLC (financial advisor to Debtors), FTI Consulting, Inc. (financial advisor to the Committee), and Milbank, Tweed, Hadley & McCloy LLP (Committee counsel).

from July 1, 2012, through October 31, 2012, working on matters related to the Falcon/Tide litigation. In contrast, Tide's counsel incurred \$157,262.25 during the same time period.

III. OBJECTION AND BASIS THEREOF

A. Tide is the Owner of the Escrowed Funds, and Those Funds Cannot be Used to Pay any of the Debtors' Expenses.

15. As detailed in the District Court Action, Tide is the rightful owner of the \$70 million in escrowed funds. Tide does not consent to use of the \$70 million in escrowed funds to pay any of the Debtors' expenses, and reserves all rights with respect thereto.

B. The Fees and Expenses Incurred by the Debtor and Committee Professionals are Unreasonable and Should not be Allocated to Falcon.

16. The point of departure for an analysis of the reasonableness of a fee request is section 330 of the Bankruptcy Code. *In re Cuisine Magazine, Inc.*, 61 B.R. 210, 212-13 (Bankr. S.D.N.Y. 1986). Section 330 contemplated reasonable compensation for actual, necessary services rendered by professionals. *See id.*; *see also* 11 U.S.C. § 330. In determining whether fees are reasonable and necessary, courts consider the results obtained by the professional's efforts. *See, e.g., Cuisine*, 61 B.R. at 212; *see also In re Nine Assocs., Inc.*, 76 B.R. 943, 945 (S.D.N.Y. 1987). Thus, at the very least, the fees and expenses incurred by the professionals retained by the Debtors and Committee must be reasonable and necessary, keeping in mind the results obtained.

17. Tide objects to the allocation of any of the fees and expenses incurred by the First Category Professionals to Falcon's estate. Falcon's alleged and disputed interest in the \$70 million in escrowed funds that are the subject of the District Court Action represent the most significant possible asset available to satisfy the claims of Falcon's creditors. Thus far, the First Category Professionals have incurred in excess of \$10 million in fees and expenses that have not benefitted, and in no way relate to, Falcon's estate. For example, Falcon has no need for a

claims agent, Bahraini counsel, financial advisors, investment bankers, numerous special counsels or a valuation advisor. The efforts of the First Category Professionals have not provided any benefit to Falcon's estate.

18. To the extent that the Debtors seek to allocate any of the First Category Professionals' fees and expenses to Falcon, the Debtors would be essentially treating the estates as substantively consolidated and seek to burden the Falcon estate with costs and expenses for which the Falcon estate has not and will not receive any benefit and otherwise would not be liable.

19. Tide also objects to allocation of the fees and expenses incurred by the Second Category Professionals to Falcon on any basis other than commensurate with the work actually performed for Falcon's estate.

20. Finally, Tide objects to the fees requested by King & Spalding related to the Tide/Falcon dispute because such fees are patently unreasonable. Tide is the plaintiff in the District Court Action and the movant with respect to the Lift Stay Motion. Virtually no activity has taken place in Falcon's bankruptcy, and the District Court Action has been stayed since Falcon's bankruptcy filing. During this time period, there has been no discovery taken, no substantive pleadings filed, and no hearings held in the District Court Action. A one day mediation was conducted in New York City with respect to the Lift Stay Motion, which did not take place during the first or second interim fee periods. It is inconceivable that, during the same time period that Tide incurred \$157,262.25 in fees and expenses related to the Tide/Falcon dispute, King & Spalding has incurred \$668,963.00 with such little or no activity occurring in Falcon's bankruptcy and the underlying District Court Action. Furthermore, to the extent King & Spalding is incurring fees and expenses, these fees and expenses are being incurred for the

benefit of Falcon's parent, Arcapita, in the hopes that some of the \$70 million in escrow will be dividended up to Arcapita and its creditors, and thus the fees and expenses should be paid by Arcapita.

IV. RESERVATION OF RIGHTS

21. At this time all fees and expenses are being paid by Arcapita and no allocation has been attempted. Tide has no objection to allowance of the fees and expenses of the Debtor and Committee's professionals on an interim basis as long as such fees and expenses are paid by Arcapita and not allocated to Falcon's estate. However, Tide reserves all rights to object to reasonableness and necessity of all fees and expenses at the final hearing, and reserves all rights to object to allocation to Falcon's estate if and when any such allocation is sought.

V. PRAYER

WHEREFORE, Tide requests that the Court sustain Tide's objections and reservations of rights as requested above. Tide also requests that the Court grant Tide such other and further relief as the Court deems just.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: /s/ William A. (Trey) Wood III

Marvin R. Lange (ML1854)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 508-6100
Facsimile: (212) 508-6101
Marvin.Lange@bgllp.com

-and-

Stephen B. Crain
William A. (Trey) Wood III
Edmund W. Robb
Jason G. Cohen
Bracewell & Giuliani LLP

711 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 223-2300
Facsimile: (713) 221-1212
Stephen.Crain@bgllp.com
Trey.Wood@bgllp.com
Edmund.Robb@bgllp.com
Jason.Cohen@bgllp.com

**COUNSEL FOR TIDE NATURAL GAS
STORAGE I, LP AND TIDE NATURAL GAS
STORAGE II, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served by ECF notice on those parties set up for ECF on this 12th day of December, 2012.

By: /s/ William A. (Trey) Wood III
William A. (Trey) Wood III