

Dennis F. Dunne
Evan R. Fleck
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000

Andrew M. Leblanc
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1850 K Street, NW, Suite 100
Washington, DC 20006
Telephone: (202) 835-7500

*Counsel for Official Committee of
Unsecured Creditors of Arcapita Bank B.S.C.(c), et al.*

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

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In re:	: Chapter 11
	:
	: Case No. 12-11076 (SHL)
ARCAPITA BANK B.S.C.(C), <u>et al.</u> ,	:
	: (Jointly Administered)
	:
Debtors.	:
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**STIPULATION AND AGREED ORDER AMONG DEBTORS, OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, ARCAPITA LIMITED, POINT
PARK PROPERTIES S.R.O, KPMG LLP (UK) AND KPMG AUDIT PLC ON
THE DEBTORS’ MOTION FOR AN ORDER CONFIRMING THE DEBTORS’
AUTHORITY TO FUND NON-DEBTOR EUROLOG AFFILIATES**

Arcapita Bank B.S.C.(c) (“Arcapita”) and its affiliated debtors and debtors in
possession (collectively, the “Debtors”)¹ in the above-captioned chapter 11 cases (the “Chapter
11 Cases”), the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases
(the “Committee”), Arcapita Limited (“Limited”), Point Park Properties S.R.O (“P3” and

together with Limited, the “EuroLog Affiliates”), KPMG LLP (UK) (“UK”) and KPMG Audit Plc (together with UK, “KPMG”) by and through their respective counsel, hereby enter into this stipulation and agreed order (the “Stipulation and Order”) and stipulate and agree as follows:²

RECITALS

WHEREAS, on August 11, 2011, the EuroLog Affiliates and KPMG entered into an engagement letter (as amended on from time to time, the “Engagement Letter”), which provided, in relevant part, for the payment by the EuroLog Affiliates of KPMG’s invoices for fees and expenses incurred by KPMG in connection with the EuroLog IPO (as defined below);

WHEREAS, during the ninety days prior to the filing of the Chapter 11 Cases, the Committee asserts that the Debtors transferred to KPMG cash in an aggregate amount of \$2,290,811 (the “Prepetition Transfers”);

WHEREAS, KPMG disputes the amount of the Prepetition Transfers;

WHEREAS, on September 10, 2012, the Court approved the Debtors’ motion pursuant to sections 105(a) and 363(b) of the Bankruptcy Code seeking authority to execute documentation in connection with, and to launch, an initial public offering (Docket No. 465; the “EuroLog IPO”) of shares indirectly held by the Debtors through non-Debtor affiliates including, among others, the EuroLog Affiliates;

WHEREAS, on October 31, 2012, the Debtors advised the Court that the EuroLog IPO would not be launched;

WHEREAS, on November 27, 2012, KPMG LLP (UK) applied for the payment of certain fees to KPMG LLP (UK) in the amount of \$1,413,243.46, which reflects a reduction by KPMG of its fees that exceed \$3,750,000 with respect to certain valuation services (the “Fee

¹ The Debtors in these chapter 11 cases are: Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited, and Falcon Gas Storage Company, Inc.

Reduction”) as further described in *Second Interim Fee Application of KPMG LLP, as Valuation Advisor to the Debtors, for Allowance and Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from July 1, 2012 Through October 31, 2012* (Docket No. 664; the “Second Interim Fee Application”), which the Court approved (Docket No. 748);

WHEREAS, on February 27, 2013, the Debtors filed the *Debtors’ Motion For Order Confirming The Debtors’ Authority To Fund Non-Debtor Eurolog Affiliates* (Docket No. 872; the “Fee Motion”) seeking an order confirming their authority to lend certain amounts to the EuroLog Affiliates pursuant to section 363(c) of the Bankruptcy Code to satisfy, *inter alia*, the invoices rendered by KPMG for fees incurred in connection with the EuroLog IPO in the aggregate amount of €2,107,058 plus expenses (the “KPMG Invoices”);

WHEREAS, on March 8, 2013, the Committee interposed an objection to the Fee Motion asserting, among other things, that the Debtors are not liable for the KPMG Invoices, payment is prohibited under section 503(c)(3) of the Bankruptcy Code, and the Debtors lacked authority to advance funds to satisfy the KPMG Invoices (Docket No. 893, the “Committee Objection”); and on March 13, 2013, the Debtors filed their reply to the Committee Objection and in support of the Fee Motion [Docket No. 914];

WHEREAS, on June 17, 2013, the Court entered an order confirming the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (With First Technical Modifications)* (Docket No. 1262; the “Plan”);

WHEREAS, the Committee, the Debtors, KPMG and the EuroLog Affiliates agree and acknowledge that it is in the best interests of the Debtors, their estates and their

2 All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Fee Motion.

creditors to settle all issues related to the payment of the KPMG Invoices without further litigation; and

WHEREAS, the Committee and the Debtors agree and stipulate that resolution of the Committee Objection in accordance with the terms of the Stipulation and Order is a sound exercise of the Debtors' business judgment.

AGREED ORDER

IT IS THEREFORE AGREED AND, UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. The Debtors are authorized and directed to pay €1,685,646.40 (the "Settlement Amount") to KPMG on the Effective Date (as defined in the Plan) of the Plan, representing a twenty percent reduction in fees from that amount requested in the Fee Motion (such reduction, the "Discount Amount"). The Settlement Amount shall be an Allowed Administrative Expense Claim (as defined in the Plan) upon approval by the Bankruptcy Court of this Stipulation and Order.
2. The Debtors and the Committee agree to release and waive any claim against KPMG, its affiliates, other member firms of KPMG International and each of their respective partners, employees and agents, on account of the Prepetition Transfers. The Committee Objection shall be deemed withdrawn, with prejudice, solely with respect to KPMG. The EuroLog Affiliates waive any claim against KPMG, its affiliates, other member firms of KPMG International and each of their respective partners, employees and agents, with respect to the Engagement Letter or any other services provided by KPMG in connection with the Eurolog IPO.
3. KPMG agrees to waive any claim against the Debtors, each of the EuroLog Affiliates, and the affiliates of the EuroLog Affiliates for fees and expenses incurred

by KPMG due and owing under the Engagement Letter, even if such amounts exceed the amounts set forth in the KPMG Invoices.

4. Subject to approval by the Bankruptcy Court of KPMG's final fee application in these chapter 11 cases without reduction, offset, recoupment or claim of any kind, KPMG agrees to waive any claim against the Debtors, each of the EuroLog Affiliates, or any affiliate of the EuroLog Affiliates on account of the Fee Reduction as reflected in the Second Interim Fee Application, and any additional reductions or discounts since the date of the Second Interim Fee Application solely with respect to those valuation services provided by KPMG pursuant to its Court-approved engagement letter and subject to the cap previously agreed to by the Debtors and KPMG. For the avoidance of doubt, other than the discount described in paragraph 1 hereof, to the extent KPMG reduces any fees earned under any engagement letter with the Debtors, the Eurolog Affiliates or affiliates of the Eurolog Affiliates for services rendered prior to the date hereof to resolve any formal or informal objection to KPMG's fees, any such reduction shall first be applied against the amounts incurred or accrued in excess of the \$3.75 million cap. In addition, the parties agree and acknowledge that KPMG agreed to cap only certain valuation services in these chapter 11 cases.

5. Except as agreed by the Committee (if prior to the effective date of the Plan), KPMG will not seek payment from any of the Debtors or their successors, including the Reorganized Debtors (as defined in the Plan), on account of fees or expenses incurred after the date hereof for any services rendered by KPMG under the Engagement Letter or for substantially similar services to those contemplated thereby (the "Future Fees").

Notwithstanding the foregoing, nothing contained herein shall restrict, preclude or otherwise prohibit KPMG from entering into one or more statements of work to the Engagement Letter or

any new engagement letters with the Debtors, or their successors, including the Reorganized Debtors, after the date hereof for any services.

6. Subject to paragraphs 4 and 5 hereof, KPMG will not seek to recover the Fee Reduction or the Discount Amount through any agreement with, or engagement by, any party, including, without limitation, the Debtors, the EuroLog Affiliates, any affiliates of the EuroLog Affiliates, any bidders for the EuroLog Assets, or any successors-in-interest to the EuroLog Assets. Notwithstanding the foregoing, nothing herein shall be construed as restricting, precluding or otherwise prohibiting KPMG in any manner from negotiating the best possible commercial fee arrangement for any and all future services with any of the foregoing parties.

7. The Debtors and the Committee each acknowledge and agree that each has no objection to KPMG providing services to any prospective purchaser of the Eurolog Assets.

8. Nothing in the Stipulation and Order shall be construed as an assumption or rejection by the Debtors of the Engagement Letter pursuant to section 365 of the Bankruptcy Code.

9. Nothing in the Stipulation and Order shall be deemed to be a settlement of the Fee Motion or the Committee Objection as each relates to Freshfields and Linklaters LLP.

10. The relief granted herein shall be binding upon the Debtors, the Committee, KPMG, and the Reorganized Debtors (as defined in the Plan), and each of their respective successors and assigns.

11. Each party represents and warrants to the other that: (a) to the extent applicable, such party's counsel is authorized to execute this Stipulation and Order on its behalf; and (b) this Stipulation and Order is duly executed and delivered.

12. No modification or amendment of this Stipulation and Order shall be valid unless it is in writing, signed by the party or parties, as applicable.

13. This Stipulation and Order may be executed in one or more counterparts, by .pdf or other electronic transmission, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. In the event this Stipulation and Order is not approved by the Court, other than this paragraph, this Stipulation shall be of no force and effect and none of its provisions will be deemed to prejudice or impair any of the parties' respective rights and remedies, nor may it be used in any way against any of the parties hereto in any litigation or contested matter. Nothing contained herein shall be deemed an admission.

15. The terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry by the Court.

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Stipulation and Order.

**MILBANK, TWEED, HADLEY &
M^cCLOY LLP**

/s/ Evan R. Fleck

Dennis F. Dunne
Andrew M. Leblanc
Evan R. Fleck
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 530-5000
*Counsel for the Official Committee
of Unsecured Creditors*

KPMG LLP (UK)

/s/ Richard White

Richard White
15 Canada Square
London, England E14 5GL
Telephone: +44 20 7311 1000

GIBSON, DUNN & CRUTCHER LLP

/s/ Craig H. Millet

Michael A. Rosenthal
Craig H. Millet
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000

*Counsel for the Debtors and Debtors in
Possession*

KPMG AUDIT PLC

/s/ Andy Pyle

Andy Pyle
15 Canada Square
London, England E14 5GL
Telephone: +44 20 7311 1000

[Signatures continued on next page]

EXECUTED by)
ARCAPITA LIMITED)
acting by Henry Thompson) /s/ Henry Thompson
) director

in the presence of:

.....

Signature of Witness
/s/ Rosalyn Bandres

Name of Witness
Rosalyn Bandres

Address of Witness
2nd Floor 15, Sloane Square

London, SW1W 8ER\

Occupation of Witness
Executive Assistant

SIGNED AS A DEED on behalf of)
POINTPARK PROPERTIES S.R.O.)
a company incorporated in the Czech Republic,) /s/ Martin Konecny
by Martin Konecny and Jamal Dutheil) authorised signatory
being persons who, in accordance with the laws)
of that territory, are acting under the authority)
of the company) /s/ Jamal Dutheil
) authorised signatory

Dated: August 28, 2013
New York, New York

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE