

MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
Dennis F. Dunne  
Evan R. Fleck  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000

Andrew M. Leblanc  
1850 K Street, NW, Suite 1100  
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  
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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**EX PARTE MOTION OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS FOR ENTRY OF AN ORDER SHORTENING NOTICE  
WITH RESPECT TO MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING EXPEDITED DISCOVERY**

The Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) (“Arcapita”) and the other debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby submits this motion (this “Motion”) pursuant to rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rules 9006-1(b) and 9077-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) requesting entry of an order shortening notice with respect to the *Motion of Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Fed. R. Bankr. P.*

2004, 9006, and 9016 Authorizing Expedited Discovery from the Debtors [Docket No. 843]  
(the “Rule 2004 Motion”).<sup>1</sup> In support of this Motion, the Committee states as follows:

### **BACKGROUND**

1. Pursuant to the Rule 2004 Motion, filed on February 19, 2013, the Committee seeks authorization to obtain discovery from the Debtors regarding the corporate governance and control rights for their Portfolio Investments on an expedited basis. The Committee requires the discovery sought to properly discharge its fiduciary duties and conduct an investigation of the “acts, conduct, [and] assets” of the Debtors, “the operation of the [D]ebtor[s]’ business” and any “matter[s] relevant to the case or to the formulation of a plan.” 11 U.S.C. § 1103(c)(2). The Committee’s previous efforts to obtain such information on an informal basis were rebuffed.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are Bankruptcy Rule 9006(c)(1) and Local Rules 9006-1(b) and 9077-1.

### **RELIEF REQUESTED**

3. By this *ex parte* Motion, the Committee seeks entry of an order pursuant to Bankruptcy Rule 9006(c)(1), substantially in the form attached hereto as Exhibit A (the “Proposed Order”), (i) shortening notice with respect to the hearing on the Rule 2004 Motion, (ii) setting the Rule 2004 Motion for a hearing on March 4, 2013, at 2:00 p.m. (prevailing Eastern Time), (iii) setting the deadline for the service and filing of objections to the Rule 2004 Motion for February 28, 2013, at 4:00 p.m. (prevailing Eastern Time), and (iv) setting the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Rule 2004 Motion.

deadline for the service and filing of replies to any objections for March 4, 2013, at 9:00 a.m. (prevailing Eastern Time).

#### **BASIS FOR REQUESTED RELIEF**

4. Bankruptcy Rule 9006(c)(1) authorizes the Court, for cause shown, to reduce the notice period otherwise required for a hearing under the Bankruptcy Rules. See Fed. R. Bankr. P. 9006(c)(1). Paragraph 24 of the Case Management Procedures [Docket No. 21] (the “Case Management Procedures”) also authorizes the Court to shorten the notice period otherwise required by the Bankruptcy Rules upon request of a party in interest. In addition, Local Rule 9077-1 provides that the Court may grant *ex parte* relief for cause shown. LBR 9077-1. Further, pursuant to Bankruptcy Rule 9007, the Court has authority to determine appropriate notice for conducting a hearing on the matters presented by the Rule 2004 Motion. See Fed. R. Bankr. P. 9007.

5. Cause exists to grant this Motion on an *ex parte* basis and to reduce the notice period for the hearing on the Rule 2004 Motion. As described in greater detail in the Rule 2004 Motion, the expedited nature of the discovery is appropriate here as a hearing is scheduled for March 26, 2013 to consider approval of the Debtors’ proposed disclosure statement, and issues related to the post-emergence management team and governance structure remain significant open points with respect to the Debtors’ proposed plan.

6. No party in interest will be unduly prejudiced by expedited consideration of the relief requested in the Rule 2004 Motion.

#### **CONSULTATION WITH THE DEBTORS**

7. As provided by paragraph 24 of the Case Management Procedures, the Committee has advised counsel to the Debtors of its intent to file this Motion, and the Debtors have no objection to this Motion.

**NOTICE**

8. Pursuant to Bankruptcy Rule 9006(c)(1), the Court may shorten time without notice. Accordingly, no notice of this Motion has been given.

**NO PRIOR REQUEST**

9. No prior application for the relief requested in this Motion has been made to this Court or any other court.

**CONCLUSION**

**WHEREFORE**, for the reasons set forth herein, the Committee respectfully requests that the Court grant this Motion and enter the Proposed Order, (i) shortening notice with respect to the hearing on the Rule 2004 Motion, (ii) setting the Rule 2004 Motion for a hearing on March 4, 2013, at 2:00 p.m. (prevailing Eastern Time), (iii) setting the deadline for the service and filing of objections to the Rule 2004 Motion for February 28, 2013, at 4:00 p.m. (prevailing Eastern Time), (iv) setting the deadline for the service and filing of replies to any objections for March 4, 2013, at 9:00 a.m. (prevailing Eastern Time), and (v) granting such other relief as is just.

Dated: February 20, 2013  
New York, New York

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

By: /s/ Evan R. Fleck  
Dennis F. Dunne  
Evan R. Fleck  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000

Andrew M. Leblanc  
1850 K Street, NW, Suite 1100  
Washington, DC 20006  
Telephone: (202) 835-7500

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

**EXHIBIT A**



**ORDERED** that the Motion is granted; and it is further

**ORDERED** that the hearing on the Rule 2004 Motion is scheduled for March 4, 2013, at 2:00 p.m. (prevailing Eastern Time); and it is further

**ORDERED** that the deadline to object to the Rule 2004 Motion shall be February 28, 2013, at 4:00 p.m. (prevailing Eastern Time); and it is further

**ORDERED** that the deadline to reply to any objections shall be March 4, 2013, at 9:00 a.m. (prevailing Eastern Time); and it is further

**ORDERED** that the Committee shall serve a copy of the Rule 2004 Motion and this Order in the manner described in the Case Management Procedures [Docket No. 21] (the “Case Management Procedures”) upon the Standard Parties, each Affected Party and the Rule 2002 Parties (in each case, as defined in the Case Management Procedures).

Dated: New York, New York  
\_\_\_\_\_, 2013

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE