SHARED RISK & REWARD

Issue 130 – January 6, 2012

Reading List

Court filing: Arcapita motion requesting extension of exclusive period until January 14 (PDF)

Court Filing: Arcapita submits Shari'ah-compliant DIP financing (PDF)

Blog Posts This Week

Oman's CMA releases draft sukuk rules

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Arcapita's reorganization, delayed

I had planned on writing an update on the Arcapita bankruptcy case this weekend for the newsletter, given that the deadline for Arcapita to submit its reorganization plan was January 5th. However, during the week, Arcapita requested another extension for its exclusive period to submit a bankruptcy plan, which would not be particularly notable had there not already been several other extensions in the past month.

In the bankruptcy process, the debtor is allowed an initial 90-day period where the debtor has an exclusive right to file a reorganization plan. In Arcapita's case this was extended another 180 days to October 15th, and then extended again until December 15th. However, when the extension was requested through December 15, Arcapita said (PDF) they "shall not request a further extension of the Exclusive Filing Period beyond the extension to December 15, 2012".

When they requested the further extension past December 15, Arcapita said they were ready to submit the plan and attributed the delay to: "the continuation of further discussions among the Debtors, the [Creditor's] Committee, and various other constituencies regarding a proposed settlement of intercreditor issues". The court approved a one-week extension to December 22, but Arcapita requested another short extension to January 5, which was also approved (PDF).

Two days before the deadline, Arcapita requested another short extension (PDF) until January 14th, which it again attributes to delays in resolving intercreditor issues (essentially how to allocate losses to creditors of Arcapita Bank and the holding company for the company's investments, Arcapita Investments Holding Limited). In the filing, Arcapita notes that "In this instance, it is also clear that the Debtors are not seeking to use exclusivity as a method of pressuring creditors into accepting their demands".

While that may be true, it is nonetheless concerning that Arcapita's creditors are deadlocked at the moment about who should take losses in the various entities, particularly since Arcapita also filed this week a motion to set the procedure to streamline Arcapita filing objections to creditor claims (i.e. Arcapita requesting that the court reject certain claims filed by creditors) (PDF).

Now, however, let's back up a bit for some perspective on the case overall. Arcapita is an Islamic private equity company that made many investments before the crisis, and just one since, buying the women's apparel retailer J. Jill. The way it made its investments was to acquire the assets in leveraged buy outs

(LBOs) using debt at the deal level, and then selling on a part of their equity investments to investors, who also were able to invest alongside Arcapita in murabaha working capital loans to the portfolio companies through unrestricted investment accounts.

On the bank level, Arcapita also had a $1.1 billion murabaha financing, a syndicated financing that it used to leverage its own balance sheet. The murabaha matured in March 2012 and during 2011, Arcapita tried to refinance the murabaha, but was unsuccessful, a failure that Arcapita's management attributed to the flare-up in the European debt crisis in August 2011. To keep things moving along, Arcapita took two additional murabaha financings from Standard Chartered Bank, which received a secured interest in Arcapita's investments (the equity that they retained on their balance sheet).

By March, Arcapita was still unsuccessful at rolling over the maturing syndicated murabaha, a portion of which was acquired in secondary markets by hedge funds who used their holdings to press for full repayment upon maturity, forcing Arcapita to file for Chapter 11 bankruptcy. During the bankruptcy process, Arcapita has continued to use its cash to support its portfolio companies, to keep them within the parameters of the debt covenants with the portfolio-company-level debtholders (which is separate from the syndicated murabaha and SCB's secured murabaha financing).

In the meanwhile, Arcapita was also negotiating $150 million in Shari'ah-compliant debtor-in-possession (DIP) financing, which was granted in mid-Dececmber (PDF). That financing was provided through a commodity murabaha (the full agreement is available in this PDF from the court). This financing is designed to provide Arcapita with the liquidity it needs until it can submit a plan, have it approved and exit bankruptcy.

What remains as yet undetermined is the reorganization plan, and specifically it will contain a plan for Arcapita to exit bankruptcy as a functioning entity, or as one focused on winding down its operations and selling over time its investments. For now, we must wait until January 14th to see what Arcapita hopes to do, unless there is a further extension.

Until next week,
Blake Goud

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