SCHAFER & WEINER, PLLC
LAW OFFICES

DANIEL J. WEINER *
MICHAEL E. BAUM **
HOWARD M. BORIN
LEON N. MAYER
JOSEPH K. GREKIN
KIM K. HILLARY
JOHN J. STOCKDALE, JR.
JEFFERY J. SATTLER
JASON L. WEINER *
SHANNA M. KAMINSKI
NICHOLAS R. MARCUS

ARNOLD SCHAFER (1948-2007)

*ALSO ADMITTED IN FLORIDA
**BOARD CERTIFIED-BUSINESS BANKRUPTCY LAW
AMERICAN BOARD OF CERTIFICATION

40950 WOODWARD AVENUE
SUITE 100
BLOOMFIELD HILLS, MICHIGAN 48304

TELEPHONE (248) 540-3340
www.schaferandweiner.com

June 30, 2017

FILED VIA ECF
Chief Judge Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States Securities and Exchange Commission v Platinum Management (NY) LLC et al.
Case No. 16-cv-6848-DKI-VMS

Dear Chief Judge Irizarry:

Schafer and Weiner, PLLC (the "Schafer Firm") represented Platinum[1] and Mr. Bart M. Schwartz (the "Receiver") with respect to issues related to certain assets of the receivership estate known as the "Arabella Assets".[2] The Schafer Firm files this submission in response to the June 27, 2017 letter submitted by the Securities and Exchange Commission (the "SEC") (DN 179) (the "SEC Submission").

The SEC made several inaccurate statements in the SEC Submission about the Schafer Firm and the Arabella Assets. The SEC used these inaccurate statements to attempt to justify the need for a new receiver in this matter – a receiver who would, for all practical purposes, be controlled by the SEC. The Schafer Firm is compelled to correct these misstatements, to express our concerns related to the SEC's request that this Court appoint a new receiver with such limited discretion, and to request that this Court to approve the settlement agreement reached in the Arabella matter (the "Arabella Settlement Agreement") as soon as possible (DN 128).

[1] Platinum Partners Credit Opportunities Master Fund, LP ("PPCO") and its wholly owned subsidiary Platinum Long Term Growth VIII, LLC, ("Agent") (Agent together with PPCO "Platinum").
[2] The "Arabella Credit Facility" has been described at length and in detail, see Declaration of Bart M. Schwartz, (DN 128-1) and Declaration of Michael E. Baum (DN 128-2). A demonstrative exhibit used in two of the related bankruptcy proceedings outlining the Arabella Credit Facility and the issues that were raised in connection with that facility is attached as **Exhibit 1**.

A Brief Background

The SEC argues in the SEC Submission that the execution of a participation agreement (the "Participation Agreement") related to the "Arabella Loan" was improper. The SEC asserts that the Schafer Firm both found the participant and negotiated the sales price of the participation, and concludes that the Schafer Firm had a conflict[3]. The SEC also implies that the Participation Agreement was bad deal for the receivership estate, and thus a poor exercise of the Receiver's business judgment.

None of this is true. The Schafer Firm did not find the participant, and did not negotiate the sales price. The Participation Agreement was not a bad deal for the receivership estate - the result of the Participation Agreement is an exponential increase in the value of the Arabella Assets. A brief summary of the events is warranted to correct the record.[4]

In May 2016, Platinum appointed Charles ("Chip") Hoebeke, a turnaround expert, as the manager of the two guarantors of the Arabella Loan (the "Arabella Entities"). Together, the Schafer Firm, Mr. Hoebeke, and other professionals carefully constructed a legal strategy with Platinum to preserve its interest in the Arabella Assets.

At the time, Platinum was under considerable financial pressures. Platinum had internally valued the Arabella Assets at approximately $1.5 million, and after accounting for accrued and estimated professional fees, Platinum projected a net value of approximately $500,000. (DN 128-1, ¶18 n.2)

Platinum made a decision that it was not financially justified to spend the professional fees necessary to implement the Schafer Firm's legal strategy for what might only be a $500,000 net value return. As a result, the legal strategy, which involved the filing of several bankruptcy proceedings, sat idle, and the Schafer Firm did what was necessary to temporarily protect Platinum's interest in the Arabella Assets.

In December of 2016, Founders Oil and Gas Operating, LLC ("Founders") initiated litigation against one of the Arabella Entities. Founders requested in the litigation that it be

[3] Even if the Schafer Firm had found the participant and negotiated the sales price, it would not have been a conflict, and the SEC gives no reason why it would have been. As previously disclosed, Platinum had, in fact, instructed the Schafer Firm to search for a participant, and the Schafer Firm had identified a potential participant.

[4] The Schafer Firm intends on submitting a fee application for its post-receivership work to this Court. The fee application will set forth these facts in greater detail. The brief summary here is merely meant to address issues in the SEC Submission.

permitted to foreclose on substantially all of the Arabella Assets. This would have completely eliminated Platinum's interest in substantially all of the Arabella Assets.

The Schafer Firm advised Platinum that the best legal strategy to prevent the complete loss of these assets was to provide $200,000.00 to pay professionals to file two chapter 11 proceedings and one chapter 15 proceeding. This was part of the overall legal strategy that Platinum and the Schafer Firm had previously formulated.

Platinum did not have the money available in December 2016 to fund this legal strategy. See DN 128-1, p. 18, n.3. As a result, in response to the Founders foreclosure litigation, Platinum instructed Mr. Hoebeke and the Schafer Firm to identify a participant for the Arabella Loan.

This Court appointed the Receiver on December 19, 2016. Mr. Hoebeke identified a participant on December 22, 2016. Mr. Hoebeke negotiated a suggested purchase price with the participant. The Schafer Firm drafted the Participation Agreement based on this information and sent it to the Receiver's staff for his approval. At about the same time, the Schafer Firm sent correspondence to Platinum, which was provided to the Receiver's staff, disclosing exactly how the money from the participant was going to be used.

The Receiver's staff consulted with independent counsel about entering into the Participation Agreement. See DN 144-4, p. 7. The Receiver also consulted with members of his staff, see DN180, ¶2, and, upon information and belief, with Platinum employees. On January 5, 2017, after these consultations, the Receiver entered into the Participation Agreement.

The money from the participant was distributed as planned and as disclosed to and as authorized by the Receiver. The Schafer Firm implemented the legal strategy it had formulated with Platinum, and coordinated the filing of three bankruptcy proceedings. The strategy worked: the estimated net value of the Arabella Assets to the receivership estate, after expenses, has increased to between $5 and $7 million. This is at least a ten-fold increase over the initial estimate. It is an infinitely better result than the alternative: Founders foreclosing on the Arabella Assets, which would have substantially eliminated the value of the interest of the receivership estate.

The June 27, 2017 Letter of the SEC

The SEC misstates a number of facts related to the execution of the Participation Agreement. The SEC Submission says, among other things:

1. "[T]he Receiver sold 45% of the estate interests in the Arabella Loan pursuant to a Participation Agreement to an investor who was introduced to the Receiver by an attorney representing the estate in the Arabella matter."

➢ This is not true. The Schafer Firm had no connection whatsoever with the participant. In fact, no one in the Schafer Firm had ever met the participant. The participant only became known by virtue of an introduction made by Mr. Hoebeke.

2. "[T]he $500,000.00 sale price was used to pay part of the attorneys' and other professionals' pre-receivership fees."

➢ This statement in its sterile form is true. However, the implication that these payments were made surreptitiously and improperly is not true.

- Platinum directed the Schafer Firm and Mr. Hoebeke to identify a participant specifically for the purpose of paying professional fees.
- The Schafer Firm disclosed in writing to Platinum, which disclosed to the Receiver's staff, exactly how the money from the participant would be used before the Receiver entered into the Participation Agreement.
- The Receiver consulted with his staff, who consulted with Platinum employees, and his general counsel before entering into the Participation Agreement, approving these payments.

3. "It appeared to the staff that the attorney had an actual conflict of interest as a result of obtaining an investor in negotiating a sales price to finance payment of his attorney fees."

➢ The Schafer Firm did not obtain the investor and did not negotiate a sales price. The purpose of the Participation Agreement was not payment of the Schafer Firm's

attorneys' fees, but rather the preservation of Arabella Assets. DN 128-1, ¶¶18 and 19. In no way did the Schafer Firm have a conflict of interest.

4. "[T]he SEC sent its own letter to the [Schafer Firm] demanding that it escrow or otherwise preserve funds sufficient to repay the estate in the event the Court directs that the funds be returned to the estate."

- The Schafer Firm received this letter by e-mail on Friday, June 16, 2017. The communication was addressed to Michael E. Baum, who was out of the office for a long holiday weekend. On June 21, 2017, the day Mr. Baum returned to the office, the Schafer Firm responded to the SEC, and requested an opportunity to meet with the SEC to discuss its request and the circumstances surrounding the Arabella Loan.

- This was only the latest in a series of requests the Schafer Firm has made to the SEC to meet, discuss these issues, and inform the SEC about the Arabella Assets and the strategy being implemented to maximize their value to the receivership estate. Unfortunately, the SEC has declined or ignored all of these requests.

The SEC's Motion To Appoint A New Receiver

This Court has requested that any responses filed related to this matter indicate whether the party filing the response would approve of the Honorable Melanie Cyganowski as the new receiver. The Schafer Firm is primarily concerned with the ability of a receiver to effectively administer the Arabella Assets, in which it has a security interest. Once the Arabella Settlement Agreement is approved and the Arabella Assets have been administered, the Schafer Firm should no longer have an interest in this receivership estate.

The Schafer Firm is concerned the proposed order appointing Ms. Cyganowski would significantly limit her ability to make business decisions which would ordinarily be well within her discretion, thus limiting her ability to effectively administer the Arabella Assets. The Schafer Firm specifically notes that ¶29 of the proposed order would require Ms. Cyganowski to submit **all** proposed transactions, no matter how small the value of the transaction, and no matter what the circumstances, to the SEC for approval. Other parties have raised concerns based on these restrictions about the ability of Ms. Cyganowski to exercise her own business judgment and maximize the assets of the receivership estate under the proposed order. The Schafer Firm shares these concerns. In addition, the Schafer Firm believes this provision has the potential to unnecessarily and dramatically slow the administration of this receivership estate, and consequently delay payments to creditors.

Consequently, the Schafer Firm objects to the proposed order to the extent that it would unreasonably limit the receiver's discretion to efficiently make ordinary business decisions. The Schafer Firm respectfully requests that, at a minimum, the proposed order be changed to allow Ms. Cyganowski the ordinary discretion of a receiver.

For similar reasons, the Schafer Firm objects to the SEC's request that this Court defer ruling on the motion to approve the Arabella Settlement Agreement. The SEC has already approved the Arabella Settlement Agreement (DN 128), three separate bankruptcy courts have already approved it, and for all of the reasons set forth in the pleadings filed by the entities involved in the Arabella matter, the Schafer Firm is asking this Court to enter an order approving the Arabella Settlement Agreement.

Conclusion

In one sense, the difference of opinion between the Schafer Firm and the SEC regarding the propriety of executing the Participation Agreement is a microcosm of the disparate positions being advanced by the various parties. Those positions can be summarized by answering two questions: (1) Does a receiver have a responsibility to maximize the value of the Receivership assets? and (2) Should the receiver's business judgment be micromanaged by the SEC?

But regardless of the Court's answers to these questions, at the very least, the merits of the Participation Agreement and any other issues before this Court should be decided based on accurate information. The Schafer Firm respectfully requests that this Court permit it the opportunity to continue to present that accurate information to the Court as this case progresses.

We respectfully request an opportunity to be heard on these matters at the July 7 conference.

Respectfully,

SCHAFER AND WEINER, PLLC

Joseph K. Grekin

JKG/tbm

{00689862.7}

EXHIBIT 1

Case 1:16-cv-06848-DLI-VMS Document 196 Filed 06/30/17 Page 8 of 8 PageID #: 4637

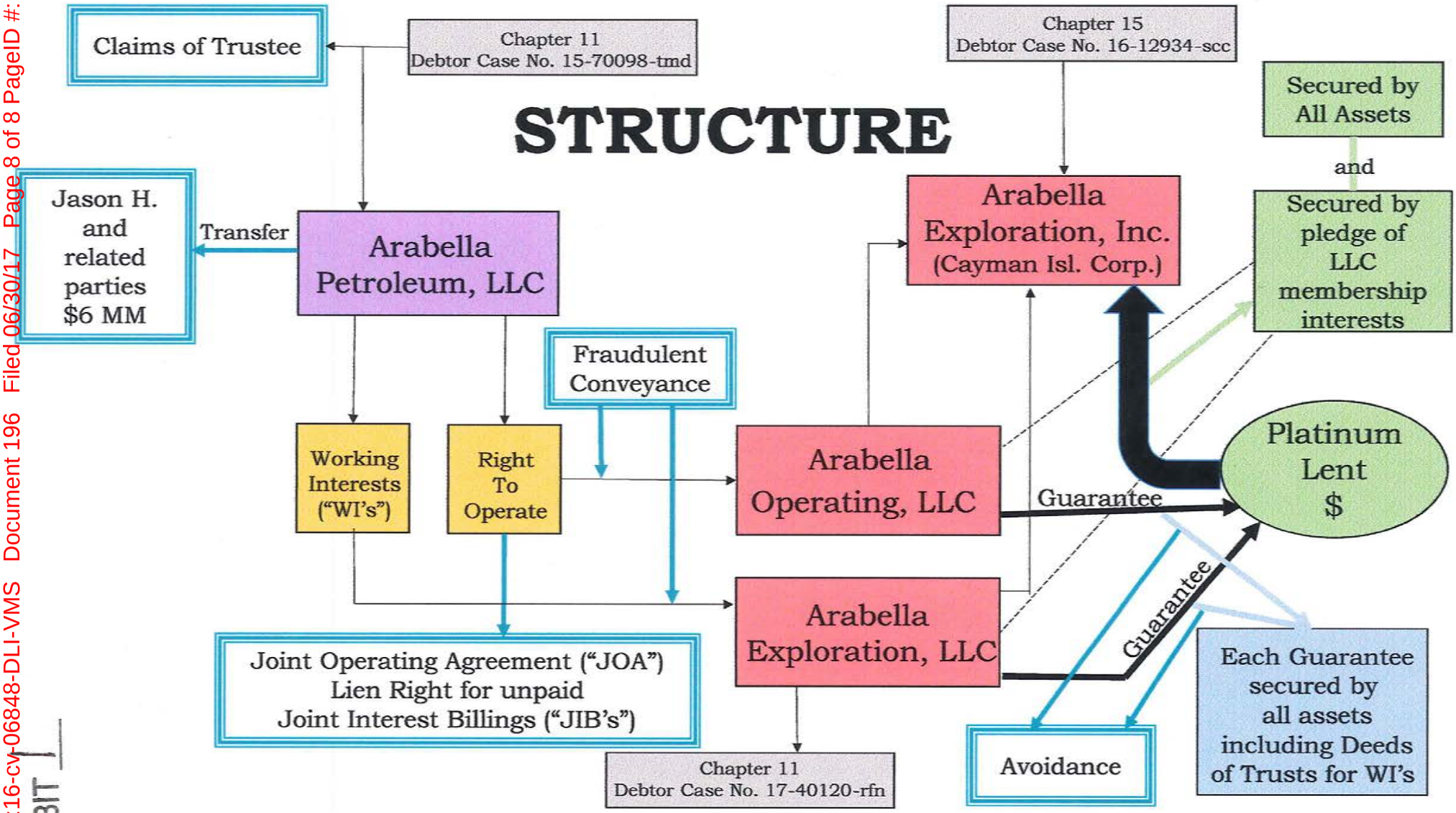

EXHIBIT 1