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June 29, 2017

VIA ECF

Honorable Dora L. Irizarry
Chief Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. Platinum Management (NY) LLC, *et al.*
Case No. 16-cv-06848-DLI-VMS

Dear Chief Judge Irizarry:

Miller Johnson represents Arabella Exploration, LLC and Arabella Operating, LLC (collectively, "Arabella"), chapter 11 debtors in Case No. 17-40120-rfn (Jointly Administered) pending in the Northern District of Texas. Arabella's largest creditor is Platinum Partners Credit Opportunities Master Fund, LP ("Platinum"). Mr. Bart M. Schwartz, in his capacity as receiver in this matter, has filed claims against Arabella in its bankruptcy proceeding asserting that the Platinum estate is owed \$20,061,589.04, plus interest, fees, costs and expenses, a claim that is secured in substantially all of Arabella's assets.

We submit this letter in response to the *Letter for Approval of Resignation of Receiver by Bart M. Schwartz* (DN 170) (the "Resignation Letter"), the *Application for an Order to Show Cause for Entry of a Second Amended Order Appointing Receiver and Appointment of a Substitute Receiver* and supporting documents submitted to this Court by the United States Securities and Exchange Commission ("SEC") (DN 173-176) (the "Application"), and the *Letter by United States Securities and Exchange Commission* (DN 179) (the "SEC Letter"). Specifically, we write in opposition to the SEC's request for this Court to defer ruling on Mr. Schwartz's motion to approve the Settlement Agreement (as defined below).

We respectfully request the Court consider this written response, and allow counsel for Arabella to appear and be heard at the Show Cause hearing scheduled for July 7, 2017. Arabella believes it has standing to be heard on the limited issues set forth in this letter, as its rights and interests will be substantially impacted should this Court agree to defer ruling on the Settlement Agreement, as requested by the SEC.

On March 27 and 28, 2017, a number of parties with complex and strongly contested interests in the Arabella oil and gas assets (the "Arabella Assets"), including, among

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others, (a) Arabella, (b) Arabella Petroleum Company, LLC (“APC”) and its court-appointed chapter 11 trustee, Morris D. Weiss (the “APC Trustee”)¹, (c) the official committee of unsecured creditors appointed in the APC bankruptcy case, (d) Arabella Exploration, Inc. (“AEI”), Arabella’s parent company², and (e) Mr. Schwartz, as receiver in this matter, took part in a mediation conducted by United States Bankruptcy Judge H. Christopher Mott, sitting in the United States Bankruptcy Court for the Western District of Texas, Austin Division. The mediation resulted in the parties entering into a Mediation Settlement Agreement (“Settlement Agreement”).

The Settlement Agreement was approved by the AEX bankruptcy court on May 5, 2017, the Cayman Court on May 10, 2017, and the APC bankruptcy court on May 24, 2017. The Settlement Agreement, by its terms, is not effective until this Court approves it. Mr. Schwartz sought such approval of the Settlement Agreement from this Court by motion dated April 25, 2017 [DN 128] (the “SEC Approval Motion”) following substantial discussions with the SEC regarding the substance of the Settlement Agreement.

Importantly, the SEC expressly consented to the relief sought in the SEC Approval Motion, while expressly requesting that certain other matters be separately addressed by this Court (See p. 6, Settlement Agreement Motion). The deadline for parties with standing to object to the Settlement Agreement has long passed. The merits of the Settlement Agreement have been properly presented to this Court, its terms have been fully vetted (including by two other federal courts and the Cayman Court), and parties in interest in this matter have had their opportunity to object (and none have done so). In short, there is no basis at this time to slow the approval of the Settlement Agreement.

Nowhere in the Application, nor in any other document submitted to the Court by the SEC, has the SEC alleged any wrongdoing by Mr. Schwartz or any other party with regard to the Settlement Agreement or otherwise given any basis to question the integrity or the merits of the Settlement Agreement – an agreement the SEC has already blessed. Perhaps the reason for this is because the Settlement Agreement measurably and significantly benefits the receivership estate, most notably as follows:

- Through the Settlement Agreement, Arabella and the other mediation parties stipulate that Platinum’s claims, loan documents, liens and security interests are valid and enforceable.

¹ APC is a chapter 11 debtor in Case No. 15-70098-RBK-11 pending in the Western District of Texas, Austin Division.

² AEI is subject to a Chapter 15 Proceeding pending in the Northern District of Texas under Case No. 17-40119-MXM. On May 3, 2017, the AEI bankruptcy court entered an Order recognizing the foreign main proceeding of *In the matter of Arabella Exploration, Inc.*, Cause No. FSD 72 of 2016 (RMJ) in the Grand Court of Cayman Islands, Financial Services Division (the “Cayman Court”).

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- The court order approving the Settlement Agreement in the Arabella bankruptcy case gives a very short deadline (15 days) for all other parties in interest in the Arabella and APC cases, including any creditor committee, to object to the validity and enforceability of Platinum's claims, loan documents, liens and security interests, which gives further finality to Platinum's claims, liens and security interests in the Arabella matter.
- The Settlement Agreement resolves pending litigation initiated by the APC Trustee that sought to invalidate Platinum's claims, liens and security interests and clawback assets that had been transferred from APC to Arabella, and which served as the collateral securing Platinum's claims, thus solidifying Platinum's interests in the Arabella collateral.
- The Settlement Agreement resolves a significant dispute regarding the ownership of certain valuable tag-along rights, which were unknown prior to the Arabella bankruptcy, thus unlocking what is anticipated to be approximately \$2,000,000 to the Arabella estate.
- And perhaps most importantly, the Settlement Agreement, through its resolution of litigation claims and questions regarding the ownership of the Arabella Assets, provides a path to the efficient and timely sale of Platinum's collateral, which ultimately benefits the receivership estate and is consistent with the SEC's goal of an orderly and timely wind down of these matters.

Time is of the essence. The sale process established in the Settlement Agreement has already been set in motion in the Arabella and APC cases. The Arabella Assets, which constitute Platinum's collateral, have been and are currently being aggressively marketed. Bids from interested buyers are currently due by July 27, 2017, an auction is presently set for August 7, 2017, and a sale hearing is currently scheduled for August 21, 2017. To date there is significant interest from market participants, with 26 parties under non-disclosure agreements and actively conducting diligence on the Arabella assets, with 3 expressing serious interest in submitting a "stalking horse" bid for the Arabella assets.

Introducing uncertainty into the market place regarding the effectiveness of the Settlement Agreement at this time – with no clear time frame for resolution – may create an insurmountable cloud on title to the Arabella Assets and chill the substantial interest expressed from prospective buyers at a time when the sale process is nearing its apex. Such a result could impede the orderly liquidation of Platinum's collateral and cause additional and unnecessary expense to the Arabella, APC and Platinum receivership estates.

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For the foregoing reasons, we respectfully request that you deny the SEC's request to delay the entry of an order approving the Settlement Agreement. Thank you for considering this letter.

Sincerely,

MILLER JOHNSON

By

David A. Hall



DAH:rlh

cc: Chip Hoebeke