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May 4, 2018  
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VIA ECF

Honorable Brian M. Cogan  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: SEC v. Platinum Mgmt. (NY) LLC, et al., No. 1:16-cv-06848-BMC

Dear Judge Cogan,

This office represents Schafer and Weiner, PLLC (“S&W”) in connection with the above matter. We are writing at this time, pursuant to Section III A of Your Honor’s Individual Practices to schedule a pre-motion conference seeking leave to file a fee application with regard to services rendered and disbursements incurred by our client in its representation of Platinum<sup>1</sup> and Bart M. Schwartz, its initial receiver (the “Initial Receiver”)

S&W represented Platinum and the Initial Receiver, with respect to issues related to certain assets of the receivership estate known as the “Arabella Assets.” Seven months ago, S&W sent its fee application to Melanie L. Cyganowski (the “Receiver”), through her counsel Otterbourg P.C. (“Otterbourg”) and to the Securities and Exchange Commission (the “SEC”), as required by the Receiver Order and Billing Instructions (defined below). But, despite the fact that S&W has made several requests to the Receiver that she file S&W’s fee application, the Receiver has not done so.

Due to the standing order entered by Chief Judge Irizarry on June 30, 2017 barring parties who are not named in the complaint from filing pleadings in this case (the “Standing Order”), S&W cannot file its own fee application. However, the Standing Order allows parties to file with this Court if the Court gives them permission to appear in this case. Therefore, S&W prays that this Court will give S&W permission to appear in this case for the limited purpose of filing its fee application with this Court and responding to any objections.

**Background**

Platinum’s Retention of S&W

In September 2014 Platinum advanced \$16,000,000 (the “Arabella Loan”) to Arabella Exploration, Inc. (“AEI”). Two related companies, Arabella Exploration, LLC (“AEX”) and

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<sup>1</sup> Platinum Partners Credit Opportunities Master Fund, LP and its wholly owned subsidiary Platinum Long Term Growth VIII, LLC (together, “Platinum”).  
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Platinum's Retention of S&W

In September 2014 Platinum advanced \$16,000,000 (the "Arabella Loan") to Arabella Exploration, Inc. ("AEI"). Two related companies, Arabella Exploration, LLC ("AEX") and Arabella Operating, LLC ("AO"), guaranteed the Arabella Loan. In August 2015 Platinum retained S&W to assist it in various matters related to the Arabella Loan.

Following the Initial Receiver's appointment, S&W assisted the Initial Receiver in matters related to the Arabella Loan. This included work related to the bankruptcies of AEX, AO, and AEI, and lawsuits filed by two different parties against AEX, AO, AEI, and Platinum. S&W represented the Initial Receiver until the Initial Receiver's resignation in mid-2017.

The SEC and Receiver's Allegations Against S&W

In early January 2017, the Initial Receiver sold a portion of its interest in the Arabella Loan to an independent third party (the "Participation Agreement"). The Initial Receiver used the proceeds from the Participation Agreement to fund the work of professionals he believed was necessary to recover the amounts owed under the Arabella Loan, and to pay certain professionals, including S&W, for outstanding invoices.

Throughout this case the SEC has accused S&W of having a conflict of interest related to the Participation Agreement and has asserted that the Participation Agreement may not be a valid and enforceable contract. *See, e.g.* Joint Letter Updating the Court on the Receivership and Requesting a Status Conference, DN 142, p.3 n. 1; Letter by SEC, DN 179, pp. 2-3; Reply in Support of Motion to Appoint Receiver, DN 211, p.5 n. 3. More recently, the Receiver has done the same. Second Status Report, DN 302, pp. 24-25. S&W vehemently disagrees with these allegations, which are based on factual inaccuracies. However, due to the Standing Order, S&W has largely been unable to address these allegations before this Court.<sup>2</sup>

S&W's Fee Application

The Second Amended Order Appointing Receiver (DN 276) (the "Receiver Order") states that the Receiver and all "Retained Personnel"<sup>3</sup> are entitled to reasonable compensation and expense reimbursement, subject to approval of fee applications by the Receivership Court. Receiver Order, ¶53. These fee applications must be filed within 45 days of the end of each calendar quarter and must be sent to the SEC for review at least 30 days before filing. *Id.* ¶54. Due to the Standing Order, "Retained Personnel" are not allowed to file fee applications with this Court. Instead, the Receiver must file all fee applications, on behalf of itself and its retained personnel.

S&W prepared a fee application for its fees related to its representation of the Initial Receiver (the "Fee Application"). In addition to detailing the fees and costs S&W has incurred, the Fee Application addresses the allegations made by the SEC and the Receiver. On September 29, 2017 S&W sent the Fee Application to Otterbourg and the SEC. In the seven months since S&W first sent the Receiver and the SEC the Fee Application, S&W has made several requests

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<sup>2</sup> On June 30, 2017, prior to the entry of the Standing Order, S&W filed a letter in response to the SEC's Letter (DN 179) in which S&W attempted to address these accusations. However, these issues were not addressed by Chief Judge Irizarry. Judge Irizarry issued the Standing Order shortly thereafter.

<sup>3</sup> "Retained Personnel" are defined as "the Receiver's agents, acting within scope of such agency" and as "persons and entities" solicited by the Receiver "to assist the Receiver in carrying out the duties and responsibilities described in this Order." Receiver Order, ¶¶ 41 and 52. Under either definition, S&W is "Retained Personnel."

to the Receiver for her to file the Fee Application. The Receiver has not done so, and has not told S&W when, or even whether, she will do so.

The Receiver has, in the meantime, filed fee applications in this Court for herself, Otterbourg, and her financial advisor in the third and fourth quarters of 2017 (DNs 282, 283, 305, and 306) and filed fee applications for approximately nineteen different professional firms<sup>4</sup> who worked for the Receiver or Initial Receiver in the third quarter of 2017.<sup>5</sup> DN 292. This Court approved every one of those fee applications. DN 289, 290, 294, 309, and 310. This Court also approved Cooley LLP's<sup>6</sup> fee application after their representation was terminated. DN 295.

In addition, the Receiver has recently repeated its allegations against S&W in a filing in AEX's bankruptcy in the Bankruptcy Court for the Northern District of Texas, Case No. 17-40120-RFN (the "AEX Court"). Objection to Notice of Claim Transfer, DN 325, pp. 7, 9-11, and 13-14. In this objection, the Receiver argues that certain issues relating to the Participation Agreement should be litigated before this Court, and not in the AEX Court. And yet, the Receiver continues to refuse to file S&W's Fee Application, which addresses these very issues and would allow them to be heard and vetted in this Court. To S&W's knowledge, the Receiver has never filed a letter or motion with this Court to litigate the issues it believes exist related to the Participation Agreement.<sup>7</sup>

### Relief Requested

S&W seeks permission from this Court to appear in this case solely for the limited purpose of filing and litigating, if necessary, the Fee Application. S&W does not wish to appear for any other purpose at this time. Allowing S&W to appear and file the Fee Application will grant to it the same opportunity that every other professional involved in this case has received — the opportunity to request that it be paid for its work. To date, S&W has been denied that opportunity.

Wherefore, S&W prays that this Court grant it leave to appear herein for the sole purpose of moving the Court to have its fee application heard and determined.

Thank you for your courtesy and cooperation.

Respectfully,

CARLET, GARRISON, KLEIN  
& ZARETSKY, LLP

By: 

Norman I. Klein

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<sup>4</sup> Two of these firms worked alongside S&W in matters related to the Arabella Loan: one served as local counsel in Texas and the other served as special oil and gas counsel.

<sup>5</sup> Many of these fee applications included authorization for specified amounts of fees in the future, allaying their need for fee applications in the fourth quarter of 2017.

<sup>6</sup> Cooley LLP served as lead counsel for the Initial Receiver.

<sup>7</sup> S&W is filing a response to the Receiver's objection in the AEX Court concurrent with the filing of this letter, which argues that the Receiver has waived its right to object to the jurisdiction of the AEX Court to decide these issues.