

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	)	
	)	Chapter 11
CHESAPEAKE ENERGY CORPORATION, <i>et al.</i> ,	)	Case No. 20-33233 (DRJ)
	)	
Debtors.	)	(Jointly Administered)

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**JOINDER TO THE DEBTORS' MOTION AND REPLY AND STATEMENT IN  
SUPPORT OF THE DISCLOSURE STATEMENT**

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The members of the ad hoc group of secured FLLO term loan lenders (the “FLLO Ad Hoc Group”),<sup>1</sup> through their undersigned counsel, hereby file this joinder (this “Joinder”) to the *Debtors’ Omnibus Reply in Support of and in Response to Objections to Approval of the Adequacy of the Disclosure Statement for the Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and its Debtor Affiliates* [ECF No. 1603] (the “Debtors’ Reply”) and the *Debtors’ Motion for Entry of an Order (i) Approving the Adequacy of the Disclosure Statement, (ii) Approving the Solicitation Procedures with Respect to Confirmation of the Debtors’ Proposed Chapter 11 Plan, (iii) Approving the Forms of Ballots and Notices in Connection Therewith, (iv) Approving the Rights Offering Procedures and Related Materials, (v) Scheduling Certain Dates with Respect Thereto, and (vi) Granting Related Relief* [ECF No. 1584] (the “Motion”) and in response to the various objections to the Motion (the “Objections”) including, but not limited to, the objection filed by the Official Committee of Unsecured Creditors (the “Committee”) [ECF No. 1550] (the “Committee Objection”). The FLLO Ad Hoc

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion (as defined herein).

Group agrees with and adopts the arguments set forth in the Motion and the Debtors' Reply and submits this Joinder to address approval of the relief requested in the Motion. The FLLO Ad Hoc Group further states as follows:

**STATEMENT AND REPLY**

1. Throughout these chapter 11 cases, and in the months prior to the Petition Date, the FLLO Ad Hoc Group has supported a restructuring process that will enable the Debtors to reduce costs, recapitalize, and emerge from bankruptcy strategically well-positioned to thrive in uniquely uncertain times and a volatile marketplace. As part of this effort, the FLLO Ad Hoc Group members—together with Franklin—committed to backstop a \$600 million new money equity rights offering in the oil and gas industry's darkest hour, in the midst of a global pandemic and during a bruising price war between Russia and Saudi Arabia.

2. The FLLO Ad Hoc Group's decisions to join with the Debtors in putting together an orderly, value-maximizing restructuring transaction and to provide meaningful new money commitments were made in the face of a threat by the Debtors to hastily file for bankruptcy and commence litigation to seek to avoid substantially all of the liens securing the FLLO loans. These commitments, which reflect the substantial leverage the Debtors had over the FLLO lenders, resulted in a chapter 11 plan that would equitize in full the \$1.5 billion FLLO term loan credit facility (which the FLLO lenders had funded only a few months prior) and provide a meaningful distribution of common stock, warrants and cash to unsecured creditors. And they were coupled with (and they were a condition to) a committed exit facility from the Debtors' RBL lenders that rounds out the financing the Debtors will need to emerge from chapter 11.

3. With these financing commitments in hand, and with support from significant majorities in three classes of claims, the Debtors have the resources and votes needed to press forward toward confirmation and emerge from bankruptcy. The Committee, however, seeks to

delay this confirmation process by drawing the Debtors into multi-stage litigation that would: (i) defer the Disclosure Statement hearing; (ii) prosecute the standing motions that the Committee filed contemporaneously with its objection and noticed for November 9, 2020; (iii) if the Committee prevails in obtaining standing, litigate the various causes of action against the Plan Sponsors, the Debtors' directors and officers and other parties; and (iv) only after many months have passed and all parties are sufficiently bruised and beaten, and after the exit commitments and backstop commitments have expired, try to achieve a confirmable plan. In other words, the Committee's vision would have the Company languish in bankruptcy indefinitely, risking substantial value degradation.

4. In support of this path, the Committee spins a tale of a liability management exercise that succeeded in avoiding a near-term bankruptcy but "give[s] rise to a whole host of legal issues," an effort by Chesapeake to "insulate" the transactions from challenge and a bankruptcy plan premised on there being "no reasonable factual or legal basis to challenge the pre-petition capital structure." Committee Obj. ¶¶ 1, 6, 8. As the Committee tells it, in late 2019, before COVID-19 hobbled the global economy, before the Russia-Saudi price war and before Chesapeake hired restructuring professionals, a group of third party lenders were "well-aware" that Chesapeake was insolvent but nevertheless decided to loan the company \$1.5 billion of new money so that Chesapeake could repay or repurchase existing debt. *Id.* ¶ 24. Then, only five months later, those same lenders strong-armed Chesapeake and its advisors into delaying its bankruptcy filing, allowing most of their liens to "harden," and provided Chesapeake with nothing in return. *See id.* ¶ 8 (alleging that the Debtors "did not even secure any accommodation from either the FLLO lenders or the Second Lien Noteholders in exchange for squandering \$3.8 billion of non-insider preference claims against them"). And these "facts," the Committee

alleges, show “remarkable alignment” with the notorious case of a Florida-based residential homebuilder, TOUSA, Inc. *Id.* ¶ 12.

5. As an initial matter, the Committee’s complaints and theories are confirmation issues. The Disclosure Statement plainly satisfies section 1125 of the Bankruptcy Code and should be approved. Approving the Disclosure Statement will not harm the Committee, which remains free to make its arguments against Plan confirmation. But, as will be borne out in greater detail at the appropriate time, the Committee’s account of the December 2019 transactions and the prepetition restructuring negotiations is pure fantasy. Chesapeake was not insolvent in December 2019; the FLLO lenders were not “well-aware” that Chesapeake was insolvent; the liability management transactions created significant value for the Debtors and their stakeholders; and the Debtors, armed with the cudgel of an opportunistic challenge to the liens that secured FLLO loans and the second lien notes, extracted significant concessions from the FLLO lenders in the course of prepetition negotiations. These concessions included (i) a six month (later extended to nine months) commitment to fully backstop a \$600 million new money equity rights offering in the early days of the COVID-19 pandemic and in the midst of the Russia-Saudi price war and (ii) a material recovery for unsecured creditors in settlement of any estate causes of action against the FLLO lenders and the second lien noteholders. And, importantly, the Debtors and the FLLO Ad Hoc Group agreed to these significant concessions, which were memorialized in the Restructuring Support Agreement and the Plan, prior to May 14, 2020—the date on which the Debtors would have needed to file for bankruptcy to preserve their alleged preference actions. In short, the significant recovery provided to the otherwise out-of-the-money unsecured creditors represents a settlement of estate claims and causes of action

against the FLLO lenders, including a settlement of those that the Committee alleges are being ignored.

6. More immediately, though, the Committee's proposed process is entirely unnecessary to allow a fair airing of its grievances before this Court and would come at an enormous cost and risk to the Debtors and their stakeholders. Instead of a multi-step protracted litigation, the issues raised by the Committee can and should be addressed at confirmation, with the standing motions heard at the same time as the hearing on the confirmation of a Plan that would settle and release those very claims the Committee seeks to bring. Staging the proceedings in that manner will enable a potential confirmation mid-December pursuant to a stipulated schedule for confirmation-related deadlines, including any further fact discovery, an exchange of expert reports and witness testimony. *See Stipulated Schedule for Confirmation Related Deadlines* [ECF No. 1540]. In advance of the confirmation hearing, the FLLO Ad Hoc Group intends to negotiate in good faith with the Committee, which has yet (despite two extension of the challenge deadline) to put forward an actual settlement proposal. The FLLO Ad Hoc Group also stands ready to participate in judicial mediation.

7. For the moment, the FLLO Ad Hoc Group submits that the issue before the Court is a simple one: the Disclosure Statement contains "adequate information" as required by section 1125 of the Bankruptcy Code. Unless the Committee prevails in its theories, the Plan is confirmable. The Committee Objection and the other Objections fail to demonstrate that the Disclosure Statement falls below the relevant standards.

### **CONCLUSION**

8. For all the foregoing reasons and for the reasons detailed in the Debtors' Reply, the FLLO Ad Hoc Group respectfully requests that the Court overrule each of the Objections,

grant the Motion approving the Disclosure Statement, and order further relief as the Court may deem just and proper.

*[Remainder of Page Intentionally Left Blank]*

Dated: October 29, 2020

Respectfully submitted,

**DAVIS POLK & WARDWELL LLP**

/s/ Damian S. Schaible

Damian S. Schaible (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Benjamin S. Kaminetzky (admitted *pro hac vice*)  
Aryeh Ethan Falk (admitted *pro hac vice*)  
Daniel Rudewicz (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Telephone: 212-450-4000  
Facsimile: 212-701-5800  
damian.schaible@davispolk.com  
darren.klein@davispolk.com  
ben.kaminetzky@davispolk.com  
aryeh.falk@davispolk.com  
daniel.rudewicz@davispolk.com

-and-

**VINSON & ELKINS LLP**

/s/ Harry A. Perrin

Harry A. Perrin (TX 15796800)  
Emily S. Tomlinson (admitted *pro hac vice*)  
1001 Fannin Street, Suite 2500  
Houston, TX 77002-6760  
Telephone: 713-758-2222  
Facsimile: 713-758-2346  
hperrin@velaw.com  
etomlinson@velaw.com

*Counsel to the FLLO Ad Hoc Group*

**CERTIFICATE OF SERVICE**

I certify that, on October 29, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Harry A. Perrin  
One of Counsel