



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
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NEW YORK, NEW YORK 10281-1022

BART M. SCHWARTZ

Solely in his capacity as Receiver of Certain
Platinum Partners funds as more particularly set forth in the
Orders of the Federal Court for the
EASTERN DISTRICT OF NEW YORK
bearing civil case No. 16-cv-6848

May 19, 2017

FILED ON ECF

The Honorable Dora L. Irizarry
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., No. 16-cv-6848 (DLI)(VMS)

Dear Chief Judge Irizarry:

Plaintiff, Securities and Exchange Commission (“SEC”), and the Court-appointed Receiver in this matter (“Receiver”), jointly submit this letter to advise the Court on the status of the Receivership and on certain procedures that the SEC staff requested and that the staff and the Receiver have mutually agreed upon to implement in the interest of transparency to the stakeholders of the Receivership. The SEC staff and the Receiver have not appeared before Your Honor since the SEC filed this action on December 19, 2016, and Bart M. Schwartz was appointed as Receiver of certain entities (the “Receivership Entities”) affiliated with the hedge fund Platinum Partners (“Platinum”) pursuant to the Order entered December 19, 2016, as amended on January 30, 2017 (the “Receiver Order”). As indicated below, we believe it is necessary for the smooth administration of the Receivership to have a conference with the Court to discuss certain items and proposals explained in this letter as the SEC staff and the Receiver have differing views on how the Receivership should progress. As discussed more fully below, the SEC staff believes that the Receivership should be wound down quickly to, among other things, minimize the accrual of professional fees (which, the staff understands, currently account for as much as 40% of the cash on hand in the Receivership), and operational and other expenses to preserve assets for investors; and that the Receiver should not make any new capital investments into what the SEC staff views as risky investments. The Receiver believes that additional cash will be coming into the estate and that a longer term horizon is necessary for him to evaluate whether Receivership assets should be invested into certain existing investments and ongoing operations in order for him to try to obtain a

Honorable Dora L. Irizarry
May 19, 2017
Page 2

higher value for the benefit of investors. The Receiver intends to seek regular feedback from investors in determining what actions are in their best interest.

Background

Prior to the Receiver's appointment, the Receivership Entities were managed quite unlike a traditional hedge fund. The majority of investments held by these entities are not stocks, bonds, or other liquid investments that trade in the financial markets. Rather, prior management of the Receivership Entities primarily invested in risky projects or companies that had difficulty finding capital elsewhere. In many cases, these investments were made into entities that could not be expected to generate significant cash in the near term, as performance would have depended on the growth of the underlying operating companies themselves and not on the performance of the financial markets. Many of the Receivership Entities' investment positions were high-interest loans to natural resource companies such as oil and gas companies, or gold or coal mining companies. Often, these were not in active operation and therefore not yet in a position to generate cash. In some cases, the companies to which Platinum loaned money could not meet their debt payments, and at times Platinum foreclosed on the asset upon the borrower's default.

When Platinum encountered liquidity problems in recent years, it did not expend sufficient capital to support many of these investment positions and these positions did not reach operating or performing status, but rather remained in a distressed state. This is the context in which the SEC asked the Court to appoint a Receiver to take control of and wind down the Receivership Entities on December 19, 2016.

The Current Stage of the Receivership

The initial stage of the Receivership was largely an exercise in urgency and triage. As discussed more fully in the Receiver's First Quarterly Status Report, the Receiver moved quickly upon his appointment to reduce expenses, terminate some employees, retain others, understand the complex investment positions and assets of the Receivership Entities, and take the steps needed to prevent dissipation of those assets pending further action.

We are now moving into the phase of the Receivership where the Receiver will focus on the monetization of the Receivership assets. The SEC staff and the Receiver have had extensive discussions about the proposal set forth herein, which were instigated by concerns raised by the staff regarding how the Receivership should proceed. The staff has expressed concerns to the Receiver regarding the costs and benefits of continuing expenditures to preserve distressed and risky investments rather than effectuating a quick wind down and preservation of investor assets; the retention of Receivership employees and overhead costs in what the staff believes should be a speedy liquidation; the accrual of professional fees; the potential tax burden on the Receivership for pre-Receivership operations and continuing operations; and the possibility that continued

Honorable Dora L. Irizarry

May 19, 2017

Page 3

capital investments of Receivership assets rather than quick liquidation could result in the Receivership becoming an unwitting investment company or investment adviser (or the Receiver himself becoming an unwitting investment adviser), which would require costly regulatory filings.¹

The Receiver is cognizant of the staff's concerns but believes that liquidation of the Receivership assets at their "true and proper value" (as that term is used in the Receiver Order) requires a longer time horizon. The Receiver believes that he has now acquired a strong understanding of the investment positions of the Receivership Entities – of which there are more than one hundred – and is developing a basis for determining which positions can be liquidated in the near term for their true and proper value, which positions require more time to develop before they can be liquidated for their true and proper value, and which positions cannot be liquidated for their true and proper value absent the provision of additional capital. It is the treatment of this last category of assets over which the SEC staff and the Receiver have differing views.

The Receiver and his team spend more time on this last category than on any other. In the Receiver Order, this Court directed the Receiver to "protect investors' assets" and "conduct an orderly wind down including a responsible liquidation of assets and orderly and fair distribution of those assets to investors." Liquidation inherently entails a marshaling of cash and a disentanglement from investment positions. These are among the fundamental principles that drive the Receiver's work. However, the Receiver also believes that in perhaps five to six investment positions involving mineral and oil operations and a stage 2 bio-pharma investment, each of which has unique facts that are outside the scope of this letter, the Receiver must evaluate whether execution of his duties under the Receiver Order requires him to commit some of the Receivership Entities' cash. The Receiver may conclude with regard to some or all of these few

¹ The staff has also expressed concern, shared by the Receiver, regarding a potentially conflicted transaction involving an attorney, who has not yet been formally retained, in connection with the Receiver's motion to approve the settlement in the Arabella matter. As the Receiver and the attorney representing the estate in the matter previously described in those motion papers, the attorney introduced an investor to the Receiver who purchased a 45% interest in the Receivership's interest in the Arabella Loan for \$500,000 pursuant to a participation agreement entered into shortly after the Receiver was appointed, which was used in part to pay pre-Receivership professional fees and apparently as an escrow for future fees. (Dkt.# 128-1 at p.6; Dkt.#128-2 at pp. 11-15) The Receiver believed that, had he not entered into this agreement, the Receivership Estate could have lost all of the value of the Arabella Loan. (Dkt.#128-2 at 6-7) After the participation agreement was consummated, it was discovered that the collateral for the Arabella Loan potentially included certain "tag-along" rights that the Receiver was not aware of at the time he entered into the agreement that increased the potential value of the Arabella Loan substantially. (Dkt.#128-2 at pp. 15-16) The staff and the Receiver believe that the circumstances surrounding the participation agreement require further scrutiny.

Honorable Dora L. Irizarry

May 19, 2017

Page 4

investments that to adequately protect investors' assets, and to conduct an *orderly* wind down and a *responsible* liquidation of assets, he needs to commit additional capital to support those assets. The Receiver cannot and will not reach such a conclusion unless he has completed extensive due diligence and concludes that the commitment of additional capital is necessary to position the asset for sale, that the Receivership Entities have more than sufficient cash to responsibly make such a commitment, and that the investors in the Receivership Entities may potentially realize a substantial benefit from this action. The SEC staff is concerned that continued expenditures and/or investments in what it views as risky assets in the context of a liquidating receivership are not advisable and that continued operation of the Receivership as an operating business has the potential to dissipate assets that could otherwise be returned to investors and result in other potential regulatory pitfalls. Accordingly, the Receiver and SEC staff agreed that it would be best for the Court and interested parties for the Receiver to submit a capital budget for the Court's approval, separate and apart from submission of any ultimate recommendation by the Receiver on disposition of specific assets.

The Receiver and his team intend to move quickly to make determinations about the five or six investment positions that may require additional capital and also to address the concerns expressed by the SEC staff. If he does reach the conclusion with regard to any particular investment position that his responsibilities to investors under the Receiver Order require him to commit additional funds of the Receivership Entities outside the ordinary course of business, he will in short order apply to the Court for permission to proceed rapidly, and he will explain the diligence and reasoning that led him to the conclusion.

The Receiver and the SEC staff have agreed that as this Receivership progresses to the next phase that the Receiver will submit capital and operating budgets for Court approval, offer the Court frequent updates on material events in the Receivership, and seek the Court's approval of the intended course of the Receivership with the opportunity for parties-in-interest to weigh in, while at the same time advancing the interests of judicial efficiency by avoiding burdening the Court with unnecessary or duplicative motions. The SEC staff and the Receiver respectfully request a status conference to review the matters discussed in this letter.

Cash Availability of the Receivership Entities

Since the Receiver's appointment, through May 1, 2017, the Receivership Entities have received approximately \$19.1 million in cash and expended approximately \$13.7 million.² At the time of

² As set forth in more detail on pages 14-15 of the Receiver's First Quarterly Report, the cash receipts resulted principally from the successful resolution of a litigation finance investment and from the proceeds of a debt repayment, and the expenditures are attributable principally to payment of life insurance premiums in connection with the Receivership Entities' life settlements

Honorable Dora L. Irizarry
May 19, 2017
Page 5

the Receiver's appointment on December 19, 2016, the Receivership Entities had a combined \$3,859,135 in cash. As of May 1, 2017, the Receivership Entities had a combined \$9,687,167.75 in cash.

In this next phase of the Receivership, as the Receiver and his team move from assessment and preservation of the assets to liquidation of the investment positions, the Receiver expects cash inflows to steeply increase. Through the end of September 2017, the Receiver is confident in cash inflows of nearly \$30 million, attributable principally to sale of the life settlements portfolio, liquidation of litigation finance positions, repayment of a loan to a law firm, and sale of the Receivership Entities' position in an energy company. In addition, the Receiver projects cash inflows during the same period of an additional approximately \$20 million, attributable principally to the anticipated sale of the Receivership Entities' position in another energy company.

Meanwhile, the Receiver expects expenses to decrease significantly as the Receivership proceeds. He will be reducing Platinum staff as the investment portfolio shrinks. The Receivership's recurring investment-related charges will decrease over time as the Receiver liquidates those investments or otherwise advances them into productive status. The Receivership expenses, for the time spent by the Receiver and his team and counsel on the aforementioned emergency/triage stage of the Receivership, will decrease as the Receivership proceeds into a more normal stage.

The Receiver will provide more detailed operating and capital budgets to the Court in the near future, as discussed below.

The SEC staff does not have a basis to confirm or deny the Receiver's projections of cash inflows nor his expectations of reduced expenses. The staff reserves the right to object to the Receiver's proposed or actual expenditures.

Anticipated Submissions to the Court and Request for Status Conference

The Receiver offers the Court two initial updates at this time. First, the Receiver within the next two weeks will reach out to investors in the Receivership Entities to offer them an opportunity to learn about the progress of the Receivership, to offer input, and to ask questions. To date, the Receiver and his team have had individual conversations with investors and have communicated with investors through mailed updates and through the Receivership website, platinumpartnersreceiver.com. Going forward, this affirmative investor outreach will occur on a regular basis. Second, the Receiver within the next two weeks will post on the Receivership website a claim form that will permit creditors and investors to file claims for amounts they believe are owed to them by the Receivership Entities. This process, which will not yet include a

portfolio, litigation finance payments, upkeep and maintenance of investment assets, and operating expenses.

Honorable Dora L. Irizarry

May 19, 2017

Page 6

deadline for the submission of claims, will offer the Receiver an opportunity to find out about previously unknown claims and to preliminarily assess the potential extent of claims against the Receivership Entities.

Among other updates going forward, the Receiver intends to notify the Court as follows:

1. A notification of the establishment of a segregated Receivership account, on terms to be agreed upon by the SEC staff and the Receiver, to set aside funds to be reserved for payment to creditors and investors of the Receivership Entities and to be distributed pursuant to a Liquidation Plan, to be filed by approximately June 15, 2017; and
2. An update on the Receiver's efforts to determine any pre-receivership tax liabilities and an estimate of operating tax liabilities going forward, to be filed by approximately June 15, 2017.

In addition to updates and notifications to the Court, the Receiver intends to make several motions to the Court in the next two months including:

1. Motions to approve payment of the fees and expenses incurred by the Receiver's firm, Guidepost Solutions LLC, and by the Receiver's counsel, Cooley LLP, from December 19, 2016 through March 31, 2017, to be filed within three business days of the filing of this letter;³
2. A motion for the approval of an operating budget, to offer the Court a better sense of recurring, ordinary course fund expenses, such as payroll, benefits, and rent, and to ask the Court to acknowledge and approve the expenditure of funds pursuant to such budget going forward, to be filed by approximately June 15, 2017;
3. A motion for the approval of a capital budget, to offer the Court a better sense of the types of recurring and anticipated non-recurring, investment-related expenses incurred by the Receivership Entities in the ordinary course of business, and to ask the Court to acknowledge and approve the expenditure of funds pursuant to such budget going forward, to be filed by approximately June 15, 2017;
4. Motions to approve the retention and payment of attorneys and other professionals, to be filed by approximately June 15, 2017;
5. Potential motions, depending on the outcome of the Receiver's due diligence efforts as described above, to make more significant investment-related expenditures outside the

³ The SEC intends to request that the Court apply a holdback of allowed fees for the Receiver, Guidepost Solutions LLC, and Cooley LLP of 45% for the initial fee applications, rather than the 20% set forth in the SEC's Billing Instructions for Receivers in Civil Actions. The SEC intends to make this request in a formal objection to the fee applications, and the Receiver, Guidepost and Cooley intend to oppose the SEC's holdback request.

Honorable Dora L. Irizarry

May 19, 2017

Page 7

ordinary course of business to protect investors' assets, to be filed by approximately June 30, 2017;

6. A motion for the retention of one or more contingency-based law firms to pursue potential affirmative litigation for the recovery of Receivership Property, to be filed by approximately July 14, 2017; and
7. A motion to approve a Liquidation Plan, as directed by the Receiver Order, setting forth the Receiver's plan for the fair, reasonable, and efficient recovery and liquidation and distribution of all remaining, recovered, and recoverable Receivership Property, to be filed by approximately July 31, 2017.

By involving the Court more closely in the course of the Receivership, it is the SEC staff's and the Receiver's goal to ensure that the Court and parties-in-interest have input into the progress of the receivership and how the Receiver is executing his responsibilities pursuant to the Receiver Order. This approach will also increase public transparency into the Receivership process so that creditors, investors, and other stakeholders can weigh in on the Receivership by making filings in Court or otherwise by informally communicating with the Receiver or his team.

To ensure that the Court agrees that our proposal strikes the optimal balance between transparency and judicial efficiency, and to further discuss the matters set forth in this letter and, to the extent necessary, the pending motions before the Court,⁴ the SEC staff and the Receiver respectfully request that the Court schedule a status conference before Your Honor. Should Your Honor prefer, both the Receiver and the SEC staff would have no objection to a conference before Magistrate Judge Scanlon. We do request, however, that the status conference *not* be held on the following dates on which the parties have commitments that cannot be changed: May 22-26.

⁴ The Receiver would especially appreciate the Court's guidance on the status of (i) his March 23, 2017 unopposed request to retain investment banking and advisory firm Houlihan Lokey Financial Advisors, Inc., which is performing critical work valuing the assets of the Receivership Estate which cannot be completed until the Receiver is able to formally retain the firm and pay its retainer; and (ii) his March 23, 2017 substantially unopposed request to add nine Platinum entities to the Receivership, for the sake of clarity of control and administrative efficiency. While this application has been pending, the Receiver has taken interim measures with respect to these "orphan" entities to delay creditor actions and litigation, but those interim measures are becoming increasingly challenging. If these entities become Receivership Entities upon the Court's approval, the Receiver will be able to formally exercise control over these entities and engage in an orderly wind-down process pursuant to the powers of the Receiver Order.

Honorable Dora L. Irizarry

May 19, 2017

Page 8

Respectfully submitted,

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