UNITED STATES
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June 8, 2017

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

Re: SEC v. Platinum Management (NY) LLP, et al., No. 16-6848 (DLI)(VMS)/Fee Applications

Dear Judge Irizarry:

We represent Plaintiff Securities and Exchange Commission ("SEC"). By letter dated May 31, 2017 [Dkt.#152] we advised the Court that we would file by Friday, June 9, an objection seeking the holdback of 45% of allowed fees of Bart Schwartz, the Receiver, Guidepost Solutions, LLC , the Receiver's adviser ("Guidepost," and together with the Receiver, "Receiver"), and Cooley LLP, the Receiver's counsel, and would object to certain fees incurred in their First Interim Fee Applications. [Dkt. #s143&144] After discussions with the Receiver and Cooley, the parties, subject to the Court's review and approval, have agreed to resolve the SEC's objections to the First Interim Fee Applications on the following terms:

1. The Receiver has agreed to write off $59,439.25 in fees incurred in connection with the Receiver's work on employee retention and hiring issues. In the SEC staff's view, there was insufficient justification for incurring such fees in connection with a liquidating receivership. Thus, the SEC staff does not object to the Court allowing the Receiver's fees on an interim basis in the amount of $1,248,126.13 and expenses in the amount of $3,795.23, subject to paragraphs 3-6 below.

2. The SEC does not object to the Court allowing $982,896.21 in fees and $7,495.57 in expenses requested in Cooley's First Interim Fee Application on an interim basis, subject to paragraphs 3-6 below. As set forth in Cooley's First Interim Fee Application, Cooley agreed to write off $69,396.00 incurred on account of work that, in the SEC staff's view, was for routine receivership and bankruptcy matters that was not properly billed to the Receivership estate.

3. The Receiver and Cooley have each agreed to a holdback of 45% of their allowed fees in the First Interim Fee Application, subject to their right to seek Court approval to release fees in excess of a 20% holdback at such time as (i) the Receiver has filed a plan of liquidation, and (ii) there is sufficient cash in the estate to pay the fees with a cushion to

ensure that investors are paid at least as much as professionals are ultimately paid in the case. The SEC reserves the right to object to any request to release any fees subject to the holdback.

4. The SEC will exercise its discretion under its billing instructions and the Receiver Order to require a holdback of not less than 20% of all allowed fees for the duration of the case. The Receiver and Cooley may apply to be paid all fees held back at the end of the case after the Court reviews the fees incurred on a cost benefit basis at the close of the Receivership in accordance with the Receiver Order.

Relevant Provisions of the Receiver Order

The Receiver Order provides in relevant part that (i) "[a]ll Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership"; (ii) "Quarterly Fee Applications may be subject to a holdback in the amount of 20% . . . in the SEC staff's discretion *or such other percentage holdback as the Court may order"*; and (iii) "[t]he total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership." [Dkt.#59.2 at 18] (emphasis added). Thus, retained professionals are on notice that the Court may impose a holdback on interim fees in excess of 20% and that fees are subject to a cost benefit review.

The SEC staff intends to evaluate the overall fees incurred in this case by comparing the values obtained from individual assets against the fees charged in connection with the asset, recognizing that the Receiver must also perform necessary work that does not result in a monetary recovery for the receivership and that the Court may approve the Receiver's use of receivership funds for specific purposes that are opposed by the SEC.

Standard of Review of Fee Applications in a Federal Equity Receivership

Although the Receiver and Cooley agreed to the 45% holdback voluntarily, the Court has wide discretion to manage fees in a receivership as the circumstances require. The Receivership Court determines the amount of compensation payable to the Receiver and his professionals "in the exercise of its reasonable discretion." *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *citing Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). In exercising such discretion, the Court should apply "a rule of moderation, recognizing that 'receivers and attorneys engaged in the administration of estates in the courts of the United States should be awarded only moderate compensation.'" *Byers*, 590 F. Supp. 2d at 645, *citing In re NY Investors, Inc.*, 79 F.2d 182, 185 (2d Cir. 1935). Moreover, when considering fee requests, two critical factors the Court should evaluate are "the results achieved and the benefit to the receivership estate." *Byers*, 590 F. Supp. 2d at 648. *See also SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992) ("Whether a receiver merits a fee is based on the circumstances surrounding the receivership, and results are always relevant") (internal citations omitted). In addition, in an SEC receivership, "opposition or acquiescence by the SEC to the fee application will be given great weight." *Byers*, 590 F. Supp. 2d at 644.

Courts should take particular care to scrutinize fee applications "to avoid even the appearance of a windfall." *SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 469 (2d Cir. 1974)). As a policy matter, the rule of moderation makes particular sense in circumstances such as those here, where it is unclear at this point in time how much investors will be able to recover on their losses.[1]

When the Court considers interim fee requests the hold back of fees is often appropriate to moderate excessive interim fees and to ensure that a Court's consideration of the appropriate fee at the end of the case is given meaningful effect. *SEC v. Byers*, 2014 U.S. Dist. LEXIS177180 at *17 (S.D.N.Y., Dec. 23, 2014) (court imposed holdbacks on attorney fees subject "to revisiting the issue at the conclusion of the case when we would know the results of the receivership."). *See also SEC v. Lauer*, 2016 U.S. Dist. LEXIS 80532 at (S.D. FL., March 7, 2016) **9-10 ("[C]ourts often 'holdback' a portion of an interim allowance pending final review of the reasonableness of the aggregate fees and disbursements paid to a particular applicant. Such holdbacks, while not mandated by statute[,] are commonly used by courts to moderate potentially excessive interim allowances and to offer an incentive for timely resolution of the case.") (internal citations omitted); *SEC v. Cobalt Multifamily Investors I, Inc.*, 542 F. Supp. 2d 277, 280-81 (S.D.N.Y. 2008) (District Court can exercise discretion to defer consideration of interim fee application to prevent the draining of the receivership estate).

Conclusion

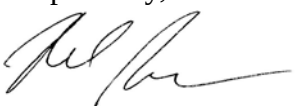
As discussed above, subject to the Court's ultimate discretion, the SEC will not object to the interim allowance of (i) fees for the Receiver in the amount of $1,248,126.13 and reimbursement of $3,795.23 in expenses; and (ii) fees for Cooley in the amount of $982,896.21 and reimbursement of $7,495.57 in expenses.

If the Court applies the agreed upon 45% holdback of fees, the SEC will not object to the payment now of (i) $686,469.37 in fees and $3,795.23 in expenses to the Receiver; and (ii)

[1] In this regard the SEC staff is also continuing its discussions with the Receiver on the implementation of an investor reserve fund mentioned in the SEC's and the Receiver's May 19, 2017 Joint Letter [Dkt.#142 at 6] to ensure that investors will be guaranteed a minimum recovery in the case. The staff believes that in light of the paucity of available cash to compensate defrauded investors, and the illiquid and speculative nature of the various investments, an investor reserve is critical to make sure that the corpus of the receivership is not consumed by fees, expenses, and risky investments. The SEC staff believes it will reach agreement with the Receiver on the fund but reserves its right to move the Court to implement such a fund if it cannot reach agreement.

$540,592.92 in fees and $7,495.57 in expenses to Cooley.

Respectfully,



Neal Jacobson

CC: By email
All counsel of record