UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff - against - PLATINUM MANAGEMENT (NY) LLC, PLATINUM CREDIT MANAGEMENT, L.P., MARK NORDLICHT, DAVID LEVY, URI LANDESMAN, JOSEPH MANN, JOSEPH SANFILIPPO, DANIEL SMALL, and JEFFREY SHULSE, Defendants.	No. 16-cv-6848 (DLI) (VMS)

DEFENDANTS PLATINUM MANAGEMENT (NY) LLC'S AND MARK NORDLICHT'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE LETTER UNDER SEAL

Defendants Platinum Management (NY) LLC ("PMNY") and Mark Nordlicht respectfully oppose Plaintiff's June 21, 2017 motion to file a letter under seal, Dkt. No. 168.[1]

PMNY and Mr. Nordlicht have no objection to Plaintiff's request to file the letter under seal, but that is not what Plaintiff, in fact, has done. Instead, Plaintiff filed the letter *ex parte* and thereby withheld its contents from the Defendants. But Plaintiff provides no justification for doing so. Plaintiff claims the letter contains "certain information regarding the operation of the Receivership, and communications between the SEC staff and the Receiver's staff regarding sensitive matters bearing on the Receivership." *Id.* While such concerns may justify sealing the

[1] While PMNY and Mr. Nordlicht cannot access the motion on ECF, Plaintiff provided Defendants with a copy of the motion after filing it. However, Plaintiff has refused to provide Defendants with Exhibit A to the motion, which is the letter Plaintiff seeks leave to file under seal.

letter, they are not sufficient to meet the high burden to justify an *ex parte* communication, which "is disfavored, as it deprives the defendant of notice of the precise content of the communication and an opportunity to respond." *United States v. Ashburn*, No. 13-cr-303, 2014 WL 5800280, at *9 (E.D.N.Y. Nov. 7, 2014) (citing *In re Taylor,* 567 F.2d 1183, 1187–88 (2d Cir. 1977)); *see also United States v. Carmichael*, 232 F.3d 510, 517 (6th Cir. 2000) ("As a general rule of thumb, in all but the most exceptional circumstances, ex parte communications with the court are an extraordinarily bad idea.").

PMNY, the primary Platinum management company, certainly has an interest in matters bearing on the receivership, especially as there is a pending motion to place PMNY into the receivership. If the SEC intends to make a motion regarding the Receiver or the Receivership Entities, that is clearly relevant to PMNY. Likewise, Mr. Nordlicht, who is both the controlling member of PMNY, as well as one of the largest investors in the Receivership Entities, undoubtedly has an interest in and right to know about these matters. Nothing in Plaintiff's four-sentence, misleadingly titled motion to seal explains why parties to this action who are also significant stakeholders in the Receivership Entities, like PMNY and Mr. Nordlicht, should be kept in the dark about "information regarding the operation of the Receivership" or "communications between the SEC staff and the Receiver's staff." *Id.*

Indeed, notwithstanding its filing the letter *ex parte*, Plaintiff does not appear to think it is actually necessary to conceal it from Defendants. When counsel for PMNY and Mr. Nordlicht asked if Plaintiff would provide Defendants with a copy of the letter, Plaintiff refused but noted that, if the Court grants the motion to seal, Plaintiff would "take no position if anyone moves to unseal" it. While Plaintiff's response begs the question of why it moved to seal the letter at all,

for present purposes it is sufficient to note that Plaintiff clearly does not believe the letter should be withheld from the Defendants.

Because Plaintiff has provided no justification for filing the letter *ex parte*, PMNY and Mr. Nordlicht respectfully request that the Court order Plaintiff to disclose the letter to the parties to this action.

Dated: Washington, D.C.
June 22, 2017

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& SULLIVAN LLP

/s/ William A. Burck

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