UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **PLATINUM MANAGEMENT (NY) LLC, d/b/a PLATINUM PARTNERS;** **PLATINUM CREDIT MANAGEMENT, L.P.;** **MARK NORDLICHT;** **DAVID LEVY;** **DANIEL SMALL;** **URI LANDESMAN;** **JOSEPH MANN;** **JOSEPH SANFILIPPO; and** **JEFFREY SHULSE;** **Defendants.**	**Civil Case No. 16-6848(DLI)(VMS)**

SECURITIES AND EXCHANGE COMMISSION'S REPLY IN FURTHER SUPPORT OF ITS APPLICATION FOR ENTRY OF A SECOND AMENDED ORDER APPOINTING RECEIVER AND APPOINTMENT OF A SUBSTITUTE RECEIVER

The Securities and Exchange Commission ("SEC") submits this Reply in Further Support of its Application for Entry of a Second Amended Order Appointing Receiver and Appointment of a Substitute Receiver ("Motion") in response to objections raised by defendants and various creditors and investors (the "Objectors").[1]

[1] On June 30, the Court entered a standing Order requiring investors and creditors to notify the SEC of their positions regarding receivership matters and further directed the SEC to present any such views to the Court. The SEC respectfully requests that the Court consider the objections that have already been filed by investors and creditors [Dkt.#s186, 197, 199, 201 & 205] as those entities' positions regarding the instant Motion to avoid the risk of the SEC misstating those positions. Although the SEC does not object to the standing of creditors and investors to appear and be heard on matters of significance in the Receivership, the SEC understands the Court's concerns and, in order to comply with the Court's Order going forward, the SEC suggests that

1. Preliminary Statement.

The SEC has serious concerns regarding the conduct of this Receivership. The SEC has stated publicly that it disagrees with the Receiver's proposal to invest limited Receivership Property into what appear to be risky and illiquid investments, a course that would be highly unusual for any equity receivership.[2] Because the SEC is mindful that the Receiver is an officer of the Court and has an independent duty to investors, the SEC insisted that the Receiver make his proposals transparent to investors and the Court and seek Court authority for his proposed expenditures. That insistence led to the filing of the Joint Letter by the SEC and the Receiver on May 19 [Dkt.#142]. As is clear from that Joint Letter, the SEC did not seek to substitute its own judgment for that of the Receiver, or the Court, and did not seek to remove the Receiver because of differing views regarding some of the Receiver's proposals.

Subsequent to the filing of the Joint Letter, the SEC staff learned from a third party that (i) the Receiver had an actual conflict of interest, as he personally represented the borrower in a valuable loan transaction made by a Receivership Entity in 2013 that is subject to active renegotiation by the Receivership, and a participant in the loan had alleged that the Receiver was not acting to enforce the loan; (ii) a Guidepost Solutions, LLC employee breached an escrow agreement and returned the funds only after being confronted by the beneficiary of the agreement

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investors and creditors submit their views to the SEC staff in writing, and the SEC staff will file those submissions as attachments to an SEC pleading in connection with the relevant proceeding.

[2] In addition to the Gold Recovery Project which is discussed more fully below, the SEC staff understands, based on conversations with the Receiver's staff, that the Receiver would also recommend investing Receivership cash into a Phase II bio-pharma company, a U.S. based gold mining operation, whose auditor issued a "going concern" letter in its Form 10-K for fiscal year 2015 and which has not filed periodic reports with the SEC since the first quarter of 2016; a U.S. based public oil and natural gas exploration company, whose auditor issued a "going concern" letter in its Form 10-K for the fiscal year ending February 2017; and a U.S. based dormant coal mining operation.

and at the insistence of counsel; and (iii) the same Guidepost employee had solicited the investor's consent to use the money held in escrow to fund the purported Brazilian Gold Recovery Project. In turn, those facts followed on the heels of other disconcerting information the staff had learned of regarding the Receiver or his employee having entered into the Arabella participation agreement on the advice of a conflicted attorney.[3]

When the SEC staff discussed these concerns with the Receiver, he offered to resign, and the SEC staff consented to his resignation.[4] The SEC staff then immediately sought to find an appropriate substitute Receiver, and filed its Motion for entry of the Proposed Second Amended Order Appointing Receiver ("Proposed Order") with the goal of effectuating an orderly wind-down of the Receivership and making distributions to investors.[5]

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[3] The SEC staff first learned of the Arabella participation agreement on April 10, 2017, when the Receiver's counsel forwarded to the staff a draft motion to approve the Arabella settlement agreement and advised the staff that the motion had to be filed the next day. In addition to seeking approval of the Arabella settlement, the draft motion also sought Court approval of the Arabella participation agreement *nunc pro tunc* and permission for the Receiver to pay the attorney up to $300,000 for post-receivership work without the necessity of filing a fee application. Pursuant to the participation agreement, the Receiver had sold a 45% interest in the Arabella Loan to an investor introduced to the Receiver by the attorney representing Platinum on the matter for $500,000, and the proceeds were used in part to pay the attorney's pre-receivership legal bill. Subsequent to that transaction, the Receiver learned that the collateral underlying the loan was more valuable than he had been told. The SEC staff was alarmed that the Receiver would seek *nunc pro tunc* approval of an agreement recommended by a conflicted attorney that paid the attorney a preference for a pre-receivership debt and that had been entered into before the Receiver learned the true value of the underlying collateral. After an extension requested by the SEC staff to ascertain the facts, the staff supported approval of the Arabella settlement but objected to the *nunc pro tunc* approval of the participation agreement and payment of the attorney fees, which the Receiver then omitted from his requested relief. [Dkt.#128]

[4] The staff sought to file its letter under seal to give the Court an opportunity to review the staff's concerns about an officer of the Court before they became public. While there was no intent at gamesmanship, the decision to delay disclosure of the letter to Defendants until the Court ruled on its sealing application was erroneous and the staff apologizes to the Court and Defendants for the manner in which it handled its sealing application generally.

[5] Subsequent to the filing of the Motion, the SEC staff learned of another troubling incident concerning the Receivership. On June 29, Christopher Kennedy, one of the Joint Official

2. The SEC is Fulfilling its Statutory Duty to Protect Investors.

The SEC's role in civil enforcement actions is to protect investors. *SEC v. Mgt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975) ("It requires little elaboration to make the point that the SEC appears in these proceedings not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws."). The SEC staff is also aware that a receiver is an officer of the Court whose powers are derived from the order appointing the receiver. *SEC v. Schooler*, 2015 WL 1510949 at *1 (S.D. Ca., Mar. 4, 2015) ("Generally, a federal equity receiver is an 'officer of the court.'") (*citing In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992). "District courts, therefore, have extremely broad authority to supervise and determine the appropriate action to be taken in a federal equity receivership." *Schooler*, 2015 WL 1510949 at *1 (*citing SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005)).

In exercising his or her powers, "[a] receiver owes a duty to exercise reasonable care to protect and preserve the assets of the receivership. In carrying out this duty, the receiver must exercise ordinary care and prudence, that is, the same care and diligence that an ordinary prudent

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Liquidators of Platinum Partners Value Arbitrage Fund L.P. ("PPVA"), a Platinum affiliate subject to a Winding Up Order of the Grand Court of the Cayman Islands and a Chapter 15 Foreign Ancillary bankruptcy case in the Southern District of New York, advised the staff that a Guidepost employee agreed to hold in a separate account $7.7 million in proceeds from the Receiver's February 2017 sale of a loan that PPVA alleged had been fraudulently transferred to a Receivership entity in March 2016, to be used solely to maintain and invest in assets in which PPVA and the Receivership both have an interest. Upon inquiry, a Guidepost employee advised the staff that although PPVA had requested that the funds be segregated, Guidepost never agreed to segregate the funds and the $7.7 million is included in the Receivership's approximately $10 million in unencumbered cash. Earlier today, counsel to the Joint Official Liquidators forwarded a letter that Mr. Kennedy had transmitted to the Receiver, which is attached hereto as Exhibit 1. Mr. Kennedy understood that the proceeds of the February sale would be used only to fund joint interests and would not be considered by the Receiver to be unencumbered Receivership cash. It is disconcerting that the staff learned once again of a potential serious claim that could dramatically restrict the Receivership's cash resources from a third party, in this case another fiduciary, and not from the Receiver. Counsel to the Joint Official Liquidators has advised the staff that he will be present at the July 7 hearing in the event the Court would like to hear from him.

person would exercise in handling his or her own estate, or under like circumstances." SEC *v. Kirkland*, 2012 WL 3871920 at *2 (M.D. Fla., Aug. 1, 2012) (internal citations omitted). *See also Fleet Nat'l Bank v. H & D Entertainment*, 926 F. Supp. 226, 240 n.51 (D. Mass. 1996), *aff'd*, 96 F.3d 532 (1st Cir. 1996).

The Receiver acknowledges that the original Order Appointing Receiver 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.'" [Joint Letter, Dkt.#142 at p. 3] Yet the Receiver and certain of the Objectors appear to misconstrue paragraph 28 of the Order Appointing Receiver to also provide the Receiver with the power to make new capital investments. [Dkt.#59-2 at p.12]. Paragraph 28 permits the Receiver, without leave of Court, to "transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property." The SEC reads this paragraph to permit the Receiver to engage in ordinary course transactions with Receivership Property without leave of Court and to seek to realize the true and proper value of such property when engaging in such ordinary course transactions. The SEC does not read this paragraph to provide authority for the Receiver to make new investments of capital with Receivership Property, and believes that such investments would be inconsistent with the Receiver's duty of care. *Cf. SEC v. Harris*, 2016 WL 1555773 at *13 (N.D. Tex., Apr. 18, 2016) (questioning receiver's rationale of continuing to operate oil wells in

order to preserve value of wells which depleted estate assets when receiver could have sold the wells as is or brought them into compliance and abandoned them).[6]

Although the Proposed Order provides for the liquidation of Receivership Property, the sole purpose of that provision is to make clear that the Receiver should not be making investments of new capital with Receivership Property. It is not designed to force the Receiver into a fire sale. The SEC expects the Receiver to exercise sound business judgment to obtain the highest possible values for the Receivership Property and understands that the Receiver may have to use estate resources to maintain certain investments over a longer period of time in order to realize such value. The SEC is amenable to amending the Proposed Order to make that position clear.[7]

3. The Court Can Approve a Receivership Liquidation Plan.

Certain of the Objectors argue incorrectly that an equity receivership cannot be used to effectuate a liquidation and pro-rata distribution, citing to *dicta* in the Second Circuit's decision in *SEC v. Am. Bd. Of Trade, Inc.*, 830 F.2d 431, 436-38 (2d Cir. 1987). In fact, the Second Circuit has approved receivership liquidation plans subsequent to *Am. Bd. Of Trade* with full recognition of the *dicta* in *Am. Bd. Of Trade. See SEC v. Malek*, 397 Fed. Appx. 711, 714-15 (2d Cir. 2010) (Second Circuit noted that it had "never vacated or modified a receivership order on the ground

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[6] In *Harris*, the District Court had also appointed an examiner to help the Court determine whether the receiver's recommendation regarding the management of oil wells "is a prudent step for the Court or a potentially fruitless and possible depletion of Receivership assets." *See* Order Appointing Examiner, *SEC v. Harris*, 09-CV-1809-B (July 26, 2011) (Dkt. # 213). A copy of the order is attached to this Reply as Exhibit 2.

[7] Certain Objectors also take issue with the requirement that the Receiver seek Court approval for dispositions of Receivership Property of a value of $1million or more, and that the Receiver consult with the SEC staff regarding all dispositions of lesser value and seek Court approval if requested by the SEC staff. The SEC is amenable to increasing the threshold for Court approval if the Court believes an increase is appropriate and would lessen the burden on the Court. However, the SEC believes that it is imperative for the SEC staff to be consulted on dispositions of Receivership Property to provide input to the Receiver for the protection of investors. This would be a consultation requirement, not a veto power.

that a district court improperly attempted to effect a liquidation," and concluded "that the district court did not abuse its equitable discretion in approving the Distribution Plan's liquidation of the receivership estate."), *citing SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80 (2d Cir. 2002) (approving district court's partial liquidation plan). To address the concerns raised by the Objectors, the SEC has always approved of the right of parties in interest to petition a receivership court to justify placing receivership entities into bankruptcy, and the Order Appointing Receiver also permits the Receiver to file bankruptcy petitions subject to Court approval if the Receiver believes it is in the best interests of the estate. None of the Objectors have explained why bankruptcy, with its high administrative costs, rigid priorities scheme that this Court of equity does not necessarily have to follow, and its mandatory motion practice, is appropriate in this case. The Objectors appear to take the implausible position that the Court cannot preside over an orderly wind down, but instead must permit a receiver to reorganize, make new investments,[8] and commence and operate businesses.

4. Potential Receivership Liability From Operation of a Business.

Both the Receiver and certain of the Objectors have ignored the significant potential liabilities the Receivership may incur if the Court permits the Receiver to operate any businesses, let alone the risk-laden enterprises the Receiver was contemplating. 28 U.S.C. § 959(a) provides that "[t]rustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property."

If the Receiver is permitted to build and operate a mining operation in the Brazilian countryside or to operate any other business, he could subject the Receivership to potential

[8] Continuing investments may also cause the Receivership to become an inadvertent investment company subject to registration and regulations concerning investments, which is not contemplated by the Order Appointing Receiver.

environmental and tort liabilities, all of which would have to be paid as administrative expenses ahead of existing investors and creditors. *See, e.g., Medical Dev. Int'l v. Cal. Dep't of Corr. & Rehab.*, 585 F.3d 1211, 1216-19 (9th Cir. 2009) (operating receiver may be sued in his official capacity for acts taken while receiver is operating the business and recovery, if any, will be from receivership assets); *In re N.P. Mining Co.*, 963 F.2d 1449, 1458 (11th Cir. 1992) (holding that 28 U.S.C. § 959 reflects a federal policy that "justif[ies] giving first priority to punitive penalties that are ordinarily incident to operation of a business" in the bankruptcy context). *See also, Reading Co. v. Brown*, 391 U.S. 471, 483-84 (1968) (holding that tort claims that arise from operation of a business in bankruptcy are entitled to priority administrative expense status and analogizing them to the treatment of tort claims in a receivership; "It has long been the rule of equity receiverships that torts of the receivership create claims against the receivership itself.").

5. The SEC has No Objection to the Receiver Making his Proposed Plan Available for the Court and Investors.

Although the SEC consents to the Receiver's resignation based on the circumstances described above in the Preliminary Statement, it has no objection to the Receiver making his recommendations available to the Court, investors, and a substitute Receiver if the Court accepts his resignation. However, in the SEC's view, the Receiver's proposed investments are inconsistent with the Receiver's exercise of his fiduciary duty, and are more consistent with the Receiver acting as a high-risk private equity or venture capital fund manager. For the SEC staff, the most glaring example of this is the Receiver's proposal to invest *at least* $5 million of Receivership cash into the Brazilian Gold Recovery Project.

In his June 23, 2017 letter [Dkt.#180], the Receiver explained that he had conducted extensive due diligence regarding the project and that he could potentially unlock significant value from the project if the Receivership invested at least $5 million of Receivership Property into it.

This project is described in the Receiver's First Quarterly Status Report [Dkt.#130-1 at 21-22] as a "tailings dam," which "is an earth-fill embankment dam used to store byproducts of mining operations," and is located near Cuiaba, Brazil. According to the Receiver, the family-owned mining operation at the site uses an "artisanal mining" approach which extracts "the easier-to-obtain larger pieces of gold through the artisanal process while discarding the tailings" into the tailings dam. There is currently no mining operation to recover the purported gold tailings from the tailings dam. Rather, the Receiver proposes that the Receivership invest money "to put the on-site infrastructure in place to commence the processing of the tailings."[9]

Thus, the Receiver, proposes to invest at least $5 million of the approximately $10 million of investors' cash on hand to build and operate a novel mining operation in the Brazilian countryside that will purportedly collect gold from a dam containing the by-product of artisanal mining operations. Because there is no existing mining operation at the site, this would essentially be a Court-supervised start-up operation by the Receiver using investor money. It is not clear to the SEC why, if the rights to the tailings dam have such potential, their value cannot be realized through a sale to another investment fund.

6. SEC's Position on Pending Motions.

The SEC believes that all pending motions filed by the Receiver should be deferred until such time as the Court appoints a substitute Receiver if the Court accepts the Receiver's resignation. The SEC believes that a substitute Receiver would be capable of prioritizing the matters that require immediate attention and promptly provide a recommendation to the Court.[10]

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[9] Significantly, the Platinum entity holding the rights to the tailings pond did not make an initial, informed investment decision to acquire those rights. Rather, in 2011, one of the Platinum entities made a $10.5 million loan to the owner of the artisanal gold mine secured by an interest in the underlying gold mine. The owner defaulted on the loan in 2013, and in 2016 the owner offered the Platinum entity the rights to the tailings pond in lieu of foreclosure.

The SEC understands that Melanie L. Cyganowski, its proposed substitute Receiver, has reviewed the docket in this case and has familiarized herself with the pending Receiver motions. As a former bankruptcy judge for the Eastern District of New York, the SEC is confident that, in the event the Court accepts the Receiver's resignation and decides to appoint her as substitute Receiver, she will be more than capable of evaluating the investments, negotiating with the various claimants, and make recommendations to the Court. Ms. Cyganowski has advised the staff that, if appointed, she is prepared to meet with investors and creditors to evaluate the Receivership's investment portfolios and discuss options to maximize their value.

7. Conclusion

For all of the foregoing reasons, the SEC requests that the Court enter the Proposed Second Amended Order Appointing Receiver, Appoint a substitute Receiver, and grant the SEC such other and further relief as is just.

Respectfully Submitted,

/s/Neal Jacobson
Neal Jacobson
Kevin McGrath
Adam Grace

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[10] Although Mr. Nordlicht, who controls the Platinum entities that are not in receivership, previously consented to the Receiver's motion to expand the Receivership for the benefit of the Receivership subject to certain conditions [Dkt.#s112 &120], he has now withdrawn his consent in light of the SEC's Motion [Dkt.#204]. Mr. Nordlicht originally consented to entry of the Order Appointing Receiver on December 19, 2016, on the condition that Bart Schwartz, who had acted as "Independent Oversight Adviser" for Platinum with the SEC staff's consent since July 2016, be appointed Receiver. In light of Mr. Nordlicht's withdrawal of consent to the Receiver's motion, the SEC's Proposed Order will need to be modified accordingly, though the SEC reserves the right to include additional entities in the Receivership in the future. If the Court grants the SEC's Motion, the SEC will submit a revised Proposed Order reflecting such modification and any other modifications that the Court may order.

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Mr. Bart Schwartz
As Receiver of Platinum Partners Credit Opportunities Fund, L.P.
c/o Guidepost Solutions
1325 Avenue of the Americas
27th Floor
Suite 2717
New York, New York 10019

5 July, 2017

Dear Bart,

Platinum Partners Value Arbitrage Fund L.P. (in liquidation) ("PPVA")

I refer to the meeting held at the offices of GLC on 17 February, 2017 between your colleagues, Mr. Ritteriser and Mr. Klett; Messrs. Han, Anderson and Hagamen of GLC Advisors & Co., LLC ("**GLC**"); and, myself and my fellow joint official liquidator of PPVA, Mr. Wright (the "**JOLs**") (the "**Meeting**"). I also refer to the countersigned letter agreement dated 2 March, 2017 which was sent by Mr. Wright to you (the "**Letter Agreement**"). I enclose a copy of the Letter Agreement for your convenience.

During the meeting and as subsequently confirmed in the Letter Agreement, the JOLs and GLC noted to your colleagues (and you) that they had become aware that Platinum Management (NY) LLC had made a series of transfers and assignments of the assets of PPVA and its subsidiaries to Platinum Partners Credit Opportunities Fund, L.P. ("**PPCO**") during the years and months immediately prior to the liquidation of PPVA (the "**Asset Transfers and Assignments**"). The JOLs have consistently expressed their concerns to you and your team that they are unable to determine the validity of any of the Asset Transfers and Assignments as a result of the complete insufficiency of books, records and supporting documentation, relating to those Asset Transfers and Assignments. Notwithstanding those legitimate concerns, it has taken the better part of 6 months to obtain agreement to the Information-Sharing Stipulation in order for the JOLs to investigate the validity of the Asset Transfers and Assignments.

Despite having entered into an Information-Sharing Stipulation the JOLs have yet to receive any documentation or information from Guidepost relating to PPVA or PPCO and their various dealings. Consequently, the JOLs continue to harbour specific concerns regarding what appears to be the total lack of consideration provided by PPCO to PPVA in respect of the Asset Transfers and Assignments and, as a result, we again place you on notice that the JOLs dispute the validity/enforceability of all of the Asset Transfers and Assignments.

Importantly and of immediate concern: one of the specific items that was discussed during the Meeting and referenced in the Letter Agreement was the impending repayment of a loan by Navidea Biopharmaceuticals

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Inc. ("**Navidea**"). It was expected that a payment of approximately $9.6 million would be due and owing under a note issued by Navidea to Platinum-Montaur Life Sciences LLC, a wholly owned subsidiary of PPVA ("**Navidea Note**"). However, it transpired that a portion of the Navidea Note was purportedly assigned to PPCO on or around March 22, 2016, and that no consideration is known to have been given by PPCO in respect of that assignment.

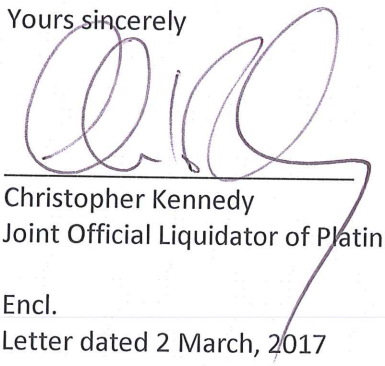
The JOLs have consistently expressed their concern to you that the proceeds of the Navidea Note were, in all likelihood, due, owing and payable to PPVA and its subsidiaries and that the purported assignment of the Navidea Note to PPCO was invalid for lack of consideration. Whilst the JOLs did not wish to spend their limited money and resources on bringing a legal challenge to intervene in the payment of a portion of the proceeds of the Navidea Note to PPCO, they have consistently reserved their right to claim repayment of those proceeds from PPCO, in due course and pending further investigation.

I am disappointed to now learn that despite the JOLs' clear and consistent communication to you and your team that the validity of the assignment of the Navidea Note was the subject of a dispute between PPVA and PPCO; despite your own personal knowledge of the lack of access that the JOLS have to information, books, records and documentation relating to PPVA generally; and, despite their being a complete lack of appropriate documentation evidencing the validity of that assignment to PPCO: Guidepost nonetheless considers the proceeds from the Navidea Note to constitute part of PPCO's free and unencumbered cash pool. As a fiduciary with specific responsibilities, it would be entirely inappropriate for Guidepost to encumber the proceeds of the Navidea Note in any way, until such time as the purported assignment of the proceeds to PPCO is clearly evidenced as being valid and enforceable.

It was our clear understanding that as fellow fiduciaries, the JOLs and Guidepost would seek to cooperate and resolve the numerous issues affecting PPVA and PPCO, insofar as was possible, without having to incur the unnecessary costs of Court proceedings. However, should the absence of such cooperation as evidenced above continue, PPVA will be forced to take all steps necessary to protect the proceeds of the Navidea Note until such time as the validity of the assignment is proven. Consequently, we hereby request your unconditional confirmation per return that the proceeds of the Navidea Note will be ring-fenced by Guidepost pending, either, the agreement between the JOLs and Guidepost as to the appropriate use of those proceeds or, the final determination of the validity of the purported assignment of the proceeds to PPCO, whichever is sooner.

I am available to discuss at your convenience.

Yours sincerely



Christopher Kennedy
Joint Official Liquidator of Platinum Partners Value Arbitrage Fund L.P. (in liquidation)

Encl.
Letter dated 2 March, 2017

RHSW CARIBBEAN

Mr. Bart M. Schwartz
as Receiver of Platinum Partners Credit Opportunities Fund, L.P.
c/o Guidepost Solutions
1325 Avenue of the Americas
27th Floor
Suite 2717
New York, New York 10019

March 2, 2017

Dear Bart,

Platinum Partners Value Arbitrage Fund L.P. – In Official Liquidation (the "Master Fund" or "PPVA")
Re: Reservation of Rights

As you know, on October 27, 2016, the Financial Services Division of the Grand Court of the Cayman Islands (the "**Grand Court**") issued a Winding Up Order (the "**Winding Up Order**"), directing the winding up of the Master Fund and appointing my colleague, Christopher Kennedy and I, as the interim joint official liquidators ("**JOLs**") thereof. On December 16, 2016, the Grand Court issued an Order appointing Mr. Kennedy and I as the JOLs of PPVA.

We are aware that you have been appointed as the Receiver for certain funds including Platinum Partners Credit Opportunities Fund L.P. ("**PPCO**") pursuant to an order of the United States District Court for the Eastern District of New York entered in the action styled *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.*, Civil Action No. 16-CV-6848 (the "**SEC Action**"). Before the entry of the Winding Up Order and the Commencement of the SEC Action, we understand that both PPVA and PPCO were managed by Platinum Management (NY) LLC (the "**Platinum Manager**") and the persons employed thereby.

In connection with our review of the books and records and assets of PPVA, we have become aware that the Platinum Manager transferred or assigned ownership of certain assets owned by PPVA or its direct or indirect subsidiaries to PPCO at various points during the past several years (the "**Transfers**"). The Transfers include, but are not limited to, the March 22, 2016 assignment to PPCO of $7,022,715.21 of principal and accrued outstanding interest (the "**Navidea Loan Assignment**") owed by Navidea Biopharmaceuticals, Inc. ("**Navidea**") to Platinum-Montaur Life Sciences LLC ("**Platinum-Montaur**"), a subsidiary of PPVA, pursuant to that certain loan agreement dated July 25, 2012 between Platinum-Montaur as lender and Navidea as borrower and all related notes issued thereunder (as at any time amended the "**Navidea Loan**").

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Please note that the JOLs, on behalf of PPVA, reserve all rights with respect to the Transfers. This reservation of rights includes, but is not limited to, the right to seek to avoid any transfers or assignments to PPCO of assets that previously belonged to PPVA or its subsidiaries, and the right to seek to recover such assets or the value thereof for the benefit of PPVA, its creditors and its stakeholders, without any deduction or setoff, irrespective of the following understanding regarding investment in joint PPVA-PPCO interests. We understand that the Receiver retains all rights that he, PPCO or any of the entities under his supervision have to object to the assertion or exercise of any such claimed rights.

We also understand that PPCO intends to provide funding through secured, interest-bearing loans or such other means that the Receiver determines to be in the best interest of the Receivership to help preserve certain investments in which both PPCO and PPVA have interests, and we recognize that such funding by PPCO will benefit PPVA as well as PPCO. Such funding is in the Receiver's sole discretion, and includes $500,000 in connection with the Desert Hawk investment, which was funded on February 24, 2017, as well as potential future funding of $5 million in connection with the Northstar investment and $500,000 in connection with the Urigen investment. We understand that the Northstar and Urigen payments are subject to approvals by the SEC or the Court. We will not attempt to avoid any such funding agreements made by PPCO, or dispute or interfere with PPCO's right to be repaid pursuant to the terms of the applicable funding agreements.

As you know, Navidea expects to repay the Navidea Loan on or before March 3, 2016. We have agreed that notwithstanding PPVA's potential avoidance claims, PPCO may receive the proceeds of such repayment which equals approximately $7,714,109.47 including principal and accrued interest through March 1, 2017 plus all related accrued and outstanding interest thereon, subject to the above reservation of rights, and PPCO does not claim ownership to the balance of the Navidea Loan which equals approximately $1,913,963.48 including principal and accrued interest through March 1, 2017 plus all related accrued and outstanding interest thereon, to which amount PPCO does not claim ownership. Please countersign a copy of this letter to acknowledge your agreement to these terms.

Please contact me if you have any questions.

Yours faithfully,

Matthew Wright
Joint Official Liquidator

ACKNOWLEDGED AND AGREED

As Receiver

Bart M. Schwartz
as Receiver for Platinum Partners Credit Opportunities Fund L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:09-CV-1809-B
	§	
GEORGE WESLEY HARRIS, STEPHEN CHRISTOPHER PLUNKETT, WILLIAM CARSON ARNOLD, and GIANT OPERATING, LLC,	§	
	§	
Defendants, and	§	
	§	
GIANT PETROLEUM, INC., and DSSC OPERATING, LLC,	§	
	§	
Relief Defendants Solely for the Purposes of Equitable Relief.	§	

ORDER APPOINTING EXAMINER

A Receiver was appointed in this case "in contemplation of the eventual return of assets to investors harmed "by the Defendants' misconduct" in order to "marshal, conserve, hold and, where necessary, operate [the investors'] assets pending further order of the Court." (Order 1, Sept. 29, 2009 (doc. 8)). Pursuant to this Order, the Receiver took control of certain assets owned by or in the possession of the Defendants and Relief Defendants, which included certain oil well properties in New Mexico. Whether the Receiver's proposals to the Court regarding the management of these oil well properties is in the best interests of the defrauded investors is an issue presently confronting the Court, raised via the "Receiver's Agreed Motion for Leave to Execute Agreements" (doc. 209).

Specifically, the Receiver seeks, *inter alia*, to "formally engage the consulting firm, New Tech Global Ventures, LLC ("NTGV") to provide consulting services to the Receivership Estate." (Agreed Mot. Leave Execute Agreements 2). Whether this is a prudent step for the Court or a potentially fruitless and possible depletion of Receivership assets is not clear from the information gleaned thus far from the Receiver. The Court has previously directed the Receiver to supply the Court with more information on how the Receiver's management of and proposed course of action regarding the oil well properties is in keeping with the Court's goal to preserve assets and reimburse the defrauded investors to the maximum extent possible. The Receiver has not satisfied the Court's concerns. Consequently, the Court seeks limited expert advice on the topic. Accordingly, pursuant to Rule 53 of the Federal Rules of Civil Procedure and the Court's inherent equitable authority, the Court hereby **APPOINTS** as Examiner in this case **Dick Watt, Watt, Beckworth, Thompson & Henneman, 1800 Pennzoil Place, South Tower, 711 Louisiana, Houston, Texas 77002, (713) 650-8100, dwatt@wattbeckworth.com**.

The Examiner is charged with advising the Court on the issues and concerns currently facing the Receivership. In particular, the Examiner is directed to provide recommendations to the Court as to:

(1) whether New Tech Global Ventures ("NGTV") should be hired as replacement operator of the Receivership wells;

(2) whether there is any potential risk in entering a minimum-term contract with NGTV;[1]

(3) what steps most likely remain for the Receiver to carry out before the Receivership is wound up;

[1]The Court was recently informed by the Receiver that NGTV has agreed to remove this requirement from its operating agreement.

(4) when the wells will become marketable;

(5) whether it would be more profitable for the remaining assets in the Receivership Estate to be sold now, and the Receivership wound down, or for the Receiver to continue owning the wells for some future period;

(6) how long the Examiner expects each of the remaining steps in the Receivership to take, particularly when a sale of the Receivership wells should occur; and

(7) any other issue that comes to light during the Examiner's analysis that he deems relevant to the Court's ultimate determination.

The Court directs the Examiner to proceed with all reasonable diligence to perform his duties under this Order. The Examiner shall convey to the Court such information as the Examiner, in his sole discretion, shall determine would be helpful to the Court in considering the interests of the investors. After the Examiner has reached his conclusions as to these issues, he shall file under seal with the Court a Report and Recommendation delineating his position as to each, as well as any other matter he deems helpful to the Court in reaching its ultimate decisions.[2]

The Examiner shall not be required to post a bond unless directed by the Court. Except for an act of willful malfeasance or gross negligence, the Examiner shall not be liable for any loss or damage incurred in connection with the discharge of his duties and responsibilities under this Order. This Order does not give rise to any attorney–client or fiduciary relationship, or any other duty, between the Examiner and any Investor(s), any party, or the Receiver.

The Examiner is not authorized to retain any person outside of his law firm to provide services to the Examiner, except by application to the Court. After the Examiner has completed his duties,

[2]This is not to say that the Examiner is in any way prohibited or discouraged from communicating with the Court via phone, fax, or otherwise during the course of his examination or as he reaches conclusions as to individual issues.

he shall file with the Court a request for approval of reasonable and necessary fees and expenses incurred by the Examiner and any person or entity retained by him, to be paid by the Receiver out of Receivership assets. Such a request should include detailed copies of the Examiner's time and billing records.

The Receiver is directed to fully cooperate with any request of the Examiner made in accordance with this Order. The Examiner shall have full access to any documents, reports, bills, communications, or other materials associated with the Receivership, and the Receiver is directed to respond to any request by the Examiner with all reasonable diligence.

SO ORDERED.

DATED July 26, 2011

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE