

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (DLI)(VMS)

PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :

Defendants. :
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PROPOSED ORDER APPROVING THE RETENTION OF OTTERBOURG P.C.

Upon the Application (the “Application”)¹ of Melanie L. Cyganowski, Court-appointed receiver (the “Receiver”), for entry of an order, approving the retention of Otterbourg P.C. (“Otterbourg”) as counsel for the Receiver, and upon consideration of the Application, the Declaration of Richard G. Haddad in Support of the Application (the “Declaration”), and it appearing that, based on the Application and the Declaration, Otterbourg consists of attorneys who are qualified to represent the Receiver as counsel in this action; Otterbourg does not hold any interests adverse to the Receiver that would preclude Otterbourg from accepting this engagement as counsel for the Receiver and from performing legal services for the Receiver; the relief requested in the Application is warranted; the relief requested is authorized by applicable law; and notice of the Application, given as described therein, was good and sufficient notice thereof.

¹ Capitalized terms not defined herein have the meanings set forth in the Application.

NOW, THEREFORE, based upon the Application and all of the proceedings before this Court, and after due deliberation and sufficient cause appearing therefor, and no objection to the Application having been raised, it is hereby:

ORDERED that the Application is granted, and, pursuant to the Application, the Receiver is authorized to employ Otterbourg, *nunc pro tunc* to July 6, 2017, the date on which the Receiver was appointed; and it is further

ORDERED that Otterbourg shall be compensated for such services, and the reasonable expenses and costs it incurs in providing such services shall be reimbursed, in accordance with the Receiver Order, as it may be amended, any other applicable Orders of the Court, and the SEC Receivership Billing Instructions; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

SO ORDERED, this __ day of _____, 2017.

United States District Court Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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	:
Defendants.	:
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No. 16-cv-6848 (DLI)(VMS)

**DECLARATION OF RICHARD G. HADDAD IN SUPPORT OF THE RECEIVER’S
APPLICATION TO RETAIN OTTERBOURG P.C. AS HER COUNSEL**

I, Richard G. Haddad, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I am a member of the law firm of Otterbourg P.C. (“Otterbourg”). I am Chair of the Firm’s Litigation Department. I am a member of the bar of this Court. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

2. I make this declaration in support of the Application by the Receiver for Entry of an Order Approving the Retention of Otterbourg as Counsel to the Receiver. The Receiver has selected Otterbourg to represent her in this action. Otterbourg has deep experience in a variety of fields relevant to this action, including complex commercial litigation, bankruptcy and corporate reorganization, insurance coverage, investment funds, litigation funding, life settlements, securities law, corporate transactions, secured transactions and other commercial

law matters. The Otterbourg lawyers who will advise the Receiver have extensive knowledge and experience in these fields.

3. More specifically, Otterbourg attorneys have experience in securities fraud and related litigation representing issuers, officers, directors and receivers. Representations include the defense of an officer and director of Refco, Inc. in consolidated class-action securities fraud litigation, consolidated foreign exchange customer fraud litigation, and D&O insurance coverage litigation. Representations also include serving as special counsel for the SEC receiver for *Credit Bancorp Ltd.* and representing secured creditor Regions Bank in *In re Wextrust Capital, LLC., et al.* (SEC receivership).

4. Subject to Court approval, Otterbourg will render professional services to the Receiver, including, but not limited to, the following:

- a. To advise, assist, and represent the Receiver with respect to her rights, remedies, powers, duties, and obligations under the Receiver Order and to prepare or assist in the preparation of pleadings, applications, motions, reports, and other papers incidental to the performance by the Receiver of her rights, powers, duties and responsibilities under the Receiver Order;
- b. To advise, assist, and represent the Receiver in connection with the preparation of the Asset Disposition Plan¹;
- c. To advise, assist, and represent the Receiver in connection with insurance matters;
- d. To advise and represent the Receiver in the review and analysis of any legal issues incident to any proposed sale or other disposition of or transaction involving any Receivership Entity assets;

¹ All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Application of Melanie L. Cyganowski, the Receiver in this Action, for Entry of an Order Approving the Retention of Otterbourg P.C. (the "Application").

- e. To advise, assist and represent the Receiver in connection with the preparation of the reports required under the Receiver Order;
- f. To advise, assist and represent the Receiver in any dealings with the SEC or any other regulatory authorities;
- g. To advise, assist and represent the Receiver in connection with the sale, collection or other disposition of any Receivership Entity assets and the closing of any such transactions;
- h. To conduct, defend or otherwise participate in any investigation, deposition, examination and/or document production as may be held or conducted in connection with this case;
- i. To advise and, if necessary, commence affirmative litigation to recover funds paid by any Receivership Entity or to recover damages sustained by any Receivership Entity;
- j. To appear, as necessary, on behalf of the Receiver before the Court and any other courts, including defending the Receiver in any litigation commenced against her and in connection with enforcing the receivership estate's rights in any foreign insolvency proceedings; and
- k. To perform any and all other legal services requested by the Receiver in the performance and exercise of her rights, remedies, powers, duties and responsibilities under the Receiver Order.

5. Subject to the Court's approval, Otterbourg will charge the Receiver for its legal services at hourly rates in effect each year less a public service discount of ten percent (10%) on the aggregate fees billed, and for reimbursement of all costs and expenses incurred in connection with this action, subject to the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "SEC Receivership Billing Instructions").

6. As of January 1, 2017, Otterbourg's actual recorded time charges are based on our hourly rates which are currently in the following ranges: Members of the Firm \$720 - \$995, Counsel \$695 - \$940, Associates \$295 - \$725, and Paraprofessionals \$275. Specifically, my hourly billing rate is \$950. However, other attorneys may also work on Receivership matters as requested by the Receiver, including, among others, the following: (i) Adam C. Silverstein, Esq., Member of the Firm, Litigation Department (\$795/hr); (ii) Daniel Fiorillo, Esq., Member of the Firm, Restructuring Department (\$925/hr); (iii) Jennifer S. Feeney, Esq., Of Counsel, Bankruptcy Department (\$725/hr); (iv) Erik B. Weinick, Esq., Of Counsel, Litigation Department (\$725/hr); (v) Nneoma Maduiké, Esq., Associate, Banking and Finance, and Corporate (\$550/hr); (vi) Pauline McTernan, Esq., Associate, Litigation Department (\$545/hr); (vii) Chad Simon, Esq., Associate, Restructuring Department (\$475/hr); and (viii) Meaghan Millan, Esq., Associate, Litigation Department (\$350/hr). In the normal course of its business, Otterbourg revises its billing rates on an annual basis, typically in October of each year. This list of attorneys is intended to be a representative, but not definitive, listing of individuals who may, if appropriate, provide services in relation to this matter. A wide range of qualified Otterbourg professionals are available to provide services in the most efficient manner possible in connection with this matter. Ultimately, the needs of the Receiver will dictate staffing determination.

7. In addition to the hourly rates set forth above, Otterbourg customarily charges its clients for all costs and expenses reasonably incurred, including electronic discovery management, computerized legal research, non-local telephone calls, facsimile and other telecommunication charges, transportation, photocopying, delivery and messenger services, secretarial overtime charges, if required, filing fees, and other disbursements, in accordance with our then current policies. Otterbourg proposes to charge the Receiver for these costs and expenses in the same manner as Otterbourg charges its other clients for the same costs and expenses, subject to the SEC Receivership Billing Instructions.

8. Otterbourg has advised the Receiver that Otterbourg will apply to the Court for allowance of compensation for professional services rendered and for reimbursement of reasonable costs and expenses incurred in connection with this matter in accordance with the Receiver Order and any other applicable Orders of the Court. Otterbourg has further confirmed to the Receiver that, in applying to the Court for compensation, Otterbourg will comply with the SEC Receivership Billing Instructions.

9. In connection with the proposed retention of Otterbourg as counsel to the Receiver, I have caused to be performed a computerized search of our records for the Defendants, their professionals, and other parties in interest based upon a review of the docket and information provided by the SEC to determine if any conflicts of interest would result from our appointment. Based upon this review, I respectfully represent that to the best of my knowledge, Otterbourg does not have any conflict of interest with any interested party in these cases, except that Otterbourg has the following connections:

(a) In 2014, Melanie Cyganowski was retained by the legal advisors of the Joint Official Liquidators (the “JOLs”) of ICP Strategic Credit Income Fund Ltd. and ICP

Strategic Credit Income Master Fund Ltd. to provide expert services in the *In re ICP Strategic Credit Income Fund Ltd and In re ICP Strategic Credit Income Master Fund Ltd.* matters (Grand Court of the Cayman Islands, Financial Services Division) (Cause Nos. FSD 82 & 269 of 2010 (AJJ)), in which the JOLs were then seeking authority from the Court to pursue a claim for fraudulent trading against DLA Piper LLP (US), counsel to a party in interest.

(b) In 2012, Melanie Cyganowski was appointed as the arbitrator of e-discovery disputes in *Picard v. Merkin*, Adv. Pro. No. 09-1182 (Bankr. SDNY) (the “Merkin Adversary Proceeding”), which engagement lasted from 2012-2015. During the pendency of the Merkin Adversary Proceeding, Bart M. Schwartz (the original Receiver in this case) was appointed as the Receiver of Ariel Fund Ltd. and Gabriel Capital LP, both of which were defendants in the Merkin Adversary Proceeding.

(c) Goldin Associates, the proposed financial advisor to the Receiver, is providing valuation-related litigation support services to Otterbourg on behalf of a common client in an unrelated matter in New York State Surrogate’s Court.

10. In addition, from time to time, Otterbourg works with other professionals that may be involved in these cases in unrelated matters. The other professionals in these unrelated matters may be co-counsel, counsel to or professionals engaged by adversaries, or counsel to or professionals engaged by other interested parties in a particular matter.

11. Otterbourg and I also provide the following information:

(a) Neither Otterbourg nor I are, or have been during the pendency of these Receivership cases, a creditor, equity security holder or insider of the Defendants.

(b) Neither Otterbourg nor I are, or have been, a director, officer or employee of the Defendants.

(c) Neither Otterbourg nor I are have an interest materially adverse to the interests of these Receivership Estates or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with or interest in the Defendants, or for any other reason.

(d) I am not a relative of any Judge of the United States District Court for the Eastern District of New York, the U.S. Securities & Exchange Commission (the "SEC") or any person employed by the SEC or U.S. Attorney's Office (EDNY). An associate in Otterbourg's Litigation Department (John Bougiamas, Esq.) is married to Panayiota ("Toula") Bougiamas, Esq., who is Assistant Regional Director, SEC Division of Enforcement, Asset Management Unit of the New York Regional Office. Mr. Bougiamas will not work on any aspect of this case and Otterbourg will apply a confidentiality screen to assure that there is an ethical wall preventing access by Mr. Bougiamas.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of July, 2017, at New York, NY.

/s/ Richard G. Haddad
Richard G. Haddad