

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
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. :
-----X

APPLICATION FOR ORDER APPROVING THE RETENTION OF GOLDIN ASSOCIATES LLC NUNC PRO TUNC TO THE APPOINTMENT DATE

Melanie L. Cyganowski, the duly appointed Receiver in this action (the “Receiver”), applies to the Court for an order, substantially in the form attached hereto as Exhibit A, approving the retention of Goldin Associates LLC (“Goldin”) as her financial advisor, *nunc pro tunc* to July 6, 2017 (the “Appointment Date”), the date on which the Receiver was appointed as the successor receiver (the “Application”).

Preliminary Statement

1. The Receiver seeks an order approving the retention of financial consultants to assist her in connection with carrying out her duties as Receiver. It is routine for a court-appointed Receiver to employ financial and accounting professionals, and the Receiver Order (defined below) explicitly allows the Receiver to retain professionals upon application to this Court. The Receiver seeks to retain Goldin, a financial advisor and consultant specializing in

underperforming businesses and distressed situations, including disposition of assets of companies and failed funds.

2. The Receiver seeks the Court's approval of Goldin *nunc pro tunc* to her appointment date. It is routine for a court-appointed Receiver to ask professionals to begin work immediately on the understanding that Court approval for their retention will be sought on a *nunc pro tunc* basis. Here, the Securities and Exchange Commission ("SEC") has asked the Receiver to step in as the successor Receiver and seamlessly and quickly take control and continue to liquidate the assets of the Receivership estates. This required immediate action by the Receiver, and necessarily entailed her need for the immediate advice and assistance of a financial advisor. Accordingly, the Receiver asked Goldin to begin work immediately on the understanding that she would seek approval for Goldin's retention *nunc pro tunc* to the date on which she was appointed.

3. The Receiver has spoken to the SEC regarding her intention to seek the retention of Goldin as her financial advisor, and the SEC supports and consents to the instant Application.

4. In support of this Application, the Receiver submits the Declaration of Marc S. Kirschner (the "Kirschner Declaration"), which is attached to this Application as Exhibit B. In further support of this Application, the Receiver states as follows:

Jurisdiction and Venue

5. The Court has jurisdiction to consider this Application pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933, 15 U.S.C. § 77t(b) & 77v(a), Sections 21(d), 21(e) and 27 of Securities Exchange Act of 1934, 15 U.S.C. §§ 78u(d), 78u(e) & 78aa, and 28 U.S.C. § 1331.

6. Venue of this action in this District is proper pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

Background

7. On December 19, 2016, the U.S. Attorney for the Eastern District of New York unsealed an eight-count indictment (the “Indictment”) against seven individuals who are formerly affiliated with a purported \$1.7 billion hedge-fund family based in New York (“Platinum”). The Indictment alleges that the defendants defrauded Platinum investors through, among other things, the overvaluation of assets, the concealment of severe cash flow problems, and the preferential payment of redemptions. The Indictment also charges four of the defendants with defrauding the independent bondholders of Black Elk Energy Offshore Operations, LLC (“Black Elk”), a portfolio company owned by Platinum, through a fraudulent offering document and diverting more than \$95 million in proceeds to Platinum by falsely representing in the offering document that Platinum controlled approximately \$18 million of the bonds when, in fact, Platinum controlled more than \$98 million of the bonds.

8. On December 19, 2016, the SEC filed this action against the defendants, and other individuals, asserting violations of the anti-fraud provisions of federal securities laws and seeking, among other relief, temporary and permanent injunctive relief, disgorgement of ill-gotten gains, imposition of civil penalties, and appointment of a receiver (the “Complaint”) [Docket No. 1].

9. On December 19, 2016, the Court entered an Order to Show Cause and Temporary Restraining Order (the “Restraining Order”) against the defendants, granting certain specified relief to the SEC, including the appointment of a Receiver, and granting the Receiver control over the assets of Platinum Credit, Platinum Partners Credit Opportunities Master Fund L.P.; Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund (BL) LLC; Platinum Liquid Opportunity Management (NY) LLC; and

Platinum Partners Liquid Opportunity Fund (USA) L.P. (collectively, the “Receivership Entities”) [Docket No. 5].

10. On December 19, 2016, the Court also entered the Order Appointing Receiver, as amended on January 30, 2017, the “Receiver Order”) [Docket Nos. 6 and 59]. The Receiver Order appointed Bart Schwartz as the Receiver.

11. On January 31, 2017, Mr. Schwartz sought to retain Cooley LLP (“Cooley”) as his counsel and Guidepost Solutions LLC (“Guidepost”) to advise, assist and support him with his duties as Receiver. [Docket Nos. 63 and 65]. Such retention applications were approved by this Court on February 17, 2017.

12. On June 23, 2017, Mr. Schwartz requested that the Court approve his resignation as Receiver of the Receivership Entities, effective upon the Court’s appointment of a successor in accordance with the Receiver Order. [Docket No. 170]. On July 6, 2017, the Court accepted the resignation of the original receiver, Mr. Schwartz, and appointed Melanie L. Cyganowski as Receiver effective immediately (*i.e.*, July 6, 2017 (the “Appointment Date”). [Docket No. 216]. The Receiver is operating under the current Receiver Order until such time that it may be amended.

13. It is the Receiver’s understanding that, effective upon her appointment, Cooley and Guidepost were relieved of their responsibilities as counsel and financial advisor, respectively, to Mr. Schwartz, but will be assisting the Receiver in the transition. Consequently, the retention of Otterbourg and Goldin Associates LLP will not be duplicative of services of the prior professionals.

The Terms of the Receiver Order

14. Under the terms of the Receiver Order, the Receiver is, among other things, to preserve the *status quo*, ascertain the extent of commingling of funds, ascertain the true financial

condition of the Receivership Entities, prevent further dissipation of property and assets of those entities, prevent the encumbrance or disposal of property or assets of the Receivership Entities, preserve the books, records, and documents of the Receivership Entities, be available to respond to investors' inquiries, protect investors' assets, conduct an orderly wind down, including a responsible disposition of assets and an orderly and fair distribution of those assets to investors, and determine whether one or more of the Receivership Entities should undertake bankruptcy filings.

15. Further, under paragraphs 44 and 45 of the Receiver Order, the Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and disposition of assets and distribution of all remaining, recovered, and recoverable Receivership Property and is required to prepare a full report and accounting of the Receivership Estates within thirty (30) days after the end of each calendar quarter (the "Quarterly Status Report"). The Quarterly Status Reports must include: summaries of the operations of the Receiver; accounting of the cash on hand; a schedule of the Receiver's receipts and disbursements; descriptions of all known property owned by the Receivership; descriptions of liquidated and unliquidated claims held by the Receivership, including valuations of claims, proposed methods of enforcing such claims, reducing the claims to judgments, and collecting judgments; a summary of the status of the Receiver's investigation; a listing of all known investors and creditors and the amount of their investments; the status of investor and creditor claims proceedings; and the Receiver's recommendations for a continuation or discontinuation of the Receivership.

16. In support of these powers and duties, paragraph 33 of the Receiver Order authorizes and empowers the Receiver, subject to leave of Court, "to resume or commence . . .

litigation” and to “investigate, prosecute, defend, intervene in or otherwise participate in” actions in any state, federal or foreign court or proceeding of any kind “as may in the Receiver’s discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve” property owned by the Receivership Entities. Paragraph 34 of the Receiver Order further authorizes, empowers, and directs the Receiver “to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted” and, with leave of this Court, “institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate.”

17. Paragraph 49 of the Receiver Order empowers the Receiver to “solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out the duties and responsibilities described in [the Receiver Order]” subject to obtaining an Order of the Court authorizing such engagement.

The Receiver’s Task and Need for Goldin’s Services

18. While much work has been done in this action by the initial Receiver, significant work remains to be done. The initial Receiver took immediate action to, among other things, reduce expenses and take initial steps to prevent the dissipation of assets. The Receiver must take prompt steps to liquidate the assets of the Receivership Entities. The investment positions of the Receivership Entities have approximately one hundred investments that are held in over thirty special purpose vehicles and subsidiaries. The investments largely consist of private debt and equity positions in a variety of operating companies and encompass all levels of the capital structure with a concentration in senior debt. *See* First Quarterly Report of Receiver. [Docket No. 130-1] As of May 1, 2017, the Receivership Entities had a combined \$9,687,167.75 in cash. *See* May 19, 2017 letter to the Court from the Receiver and the SEC [Docket No. 142]

19. The Receiver must continue to reduce expenses and liquidate assets. In this regard, the Receiver must immediately begin or continue the preparation of a proposed plan to dispose of the assets of the Receivership Entities, review on-going litigations and bankruptcy proceedings relating to some of the entities under the Receiver's control, and review possible litigation to recover property of the Receivership Entities. The Receiver will require Goldin's assistance with, among other things, evaluating the assets under the Receiver's control, consulting on the best course to dispose of such assets and facilitating such disposal, assisting with the administration of such assets, as necessary, until liquidated, assisting from a financial and forensic perspective the investigation of possible causes of action to reclaim assets, and assisting with the review and analysis of the claims against the Receivership Estates. In addition, some funds are in liquidation under the authority of the Grand Court of the Cayman Islands and, because some Receivership Entities jointly own certain investments with those entities, and have other relationships, the Receiver will need the services of financial professionals in order to evaluate the Receivership Entities' interests in those arrangements, understand the value of those interests, and evaluate possible agreements entered into with the liquidators appointed in the Cayman Islands.

Services to Be Provided by Goldin

20. The services of Goldin are necessary to enable the Receiver to perform and exercise faithfully and confidently her rights, remedies, powers, duties, and responsibilities under the Receiver Order. Subject to further Order of the Court, the Receiver proposes to use Goldin to render services including, but not limited to, the following:

- (a) To advise and assist the Receiver in performing and exercising her rights, remedies, powers, duties, and obligations under the Receiver Order;

(b) To assist the Receiver in reviewing and analyzing the books and records of the Receivership Entities;

(c) To advise and assist the Receiver in connection with managing, controlling, operating, and maintaining the Receivership Entities;

(d) To advise and assist the Receiver in the review and analysis of any financial issues incident to any proposed sale or other disposition of or transaction involving property owned by the Receivership Entities;

(e) To advise and assist the Receiver in connection with the actual or potential sale, collection, or other disposition of or transaction involving any Receivership Entity assets and the closing of any such transactions;

(f) To advise and assist the Receiver and the Receiver's counsel in any investigation, litigation, deposition, examination, and document production as may be held or conducted in connection discharging the Receiver's duties as Receiver;

(g) To provide advice, support and assistance to the Receiver with respect to the proper receipt, disbursement, and accounting of funds from the sale or other disposition of any property owned by the Receivership Entities;

(h) To advise and assist the Receiver and the Receiver's counsel in connection with any affirmative litigation to recover funds paid by any Receivership Entity or to recover damages sustained by any Receivership Entity;

(i) To perform any and all other financial services necessary or desirable for the assistance and support of the Receiver in the performance and exercise of her rights, remedies, powers, duties and responsibilities under the Receiver Order.

Goldin's Qualifications

21. The professionals employed by Goldin include certified public accountant certified insolvency and restructuring advisors, a certified fraud examiner, and forensic financial and valuation consultants and analysts. These professionals have extensive experience and expertise in (i) the analysis, operation, restructuring and liquidation of businesses, (ii) forensic and fraud investigation, (iii) asset tracing, (iv) valuation, and (v) investment banking. Goldin's extensive experience advising or assisting in the wind-down of the affairs during the bankruptcies or restructurings of investment funds and financial services companies, includes Fletcher International, Copperfield Investments, District 65 Retirement Trust, First Interregional Advisors, Granite Funds, Interbank Funding, Lehman Brothers, Mezonnen Fund, Pharmacy Fund, Refco Capital Markets, Syncora, FGIC, Student Finance Corp. and Thornburg Mortgage. Marc S. Kirschner, who will be one of the leads on the assignment, has over 40 years of experience as a bankruptcy, corporate reorganization lawyer, officer of SEC registered management companies specializing in investments of financially distressed entities (investor, general counsel and chief operating officer), and court-appointed liquidation or litigation trustee in large and complex Chapter 11 cases (*e.g.*, Refco Capital Markets, Tribune, Le-Natures, and Millennium Health).

22. For all of these reasons, the Receiver believes that Goldin and its professionals are well qualified to assist her in this matter.

Compensation and Expense Reimbursement of Goldin

23. The Receiver proposes that Goldin charge its usual and customary rates, subject to a 10% public service discount requested by the Receiver and pursuant to the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (the "SEC Receivership Billing Instructions"). Those rates are currently as set forth

below. In the normal course of its business, Goldin revises its billing rates on an annual basis, typically towards the beginning of each calendar year.

Professional Experience Level	Hourly Rate	Hourly Rate Subject to 10% Discount
Senior Managing Director/Senior Special Advisor	\$900 to \$950	\$810-\$855
Managing Director/Senior Advisor	\$700 to \$900	\$630-\$810
Director	\$600 to \$700	\$540-\$630
Vice President	\$500 to \$600	\$450-\$540
Associate	\$350 to \$500	\$315-\$450
Analyst	\$300 to \$350	\$225-\$315

24. Marc S. Kirschner, Senior Managing Director, will lead the assignment, along with Managing Director William Edwards, on behalf of Goldin. Mr. Kirschner's rate is \$950 (\$855 inclusive of the public service discount) and that of Mr. Edwards is \$850 (\$765 inclusive of the public service discount). Goldin has advised the Receiver that a wide range of qualified Goldin professionals are available to provide services to the Receiver in an efficient manner consistent with the needs of the Receiver, which will ultimately dictate staffing determinations.

25. In addition to the hourly rates proposed above, Goldin customarily charges its clients for all costs and expenses reasonably incurred, including computerized 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. Goldin proposes to charge the Receiver for these costs and expenses in the same manner as Goldin charges its other clients for the same costs and expenses, subject to the SEC Receivership Billing Instructions.

26. Goldin has advised the Receiver that it 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. Goldin has further confirmed to the Receiver that, in applying to the Court for compensation, Goldin will comply with the SEC Receivership Billing Instructions.

No Adverse Interest Precluding Employment of Goldin

27. Goldin has examined its books and records for potential conflicts and connections. Based on the assessment conducted to date by Goldin, and as set forth in the Kirschner Declaration, Goldin has advised the Receiver that to the best of its knowledge, neither Goldin, nor any professional thereof, including Mr. Kirschner, has any conflict or connection except that Goldin disclosed the following connections

(a) Former New York State Department of Financial Services official Dan Burstein (currently with Guidepost Solutions, LLC (“Guidepost”)) oversaw Goldin’s work on the now-concluded monitorship of Ocwen Financial. Mr. Burstein and a Goldin Managing Director who helped lead the Ocwen engagement, William Edwards, remained in contact. Prior to Goldin being approached about the instant role in the Receivership Case, Mr. Burstein had apprised Mr. Edwards that Guidepost was experiencing disagreements with the SEC in connection with the Receivership Case.

(b) Goldin serves as a valuation expert for Quinn Emanuel Urquhart & Sullivan LLP (“Quinn”) on behalf of a common client in two unrelated matters. In addition, Quinn represents parties in many bankruptcy matters where Goldin may represent parties that are aligned with, or adverse to, clients of Quinn.

(c) A former Platinum employee, Ben-Zion Radinsky, is a personal acquaintance of a Goldin Managing Director.

(d) Goldin is adverse to Duff & Phelps on behalf of an unrelated client in an unrelated matter. In addition, a Duff & Phelps employee is a trustee in an unrelated matter and has retained Goldin as financial advisor in that matter. Moreover, Duff & Phelps is involved representing parties in many bankruptcy matters where Goldin may represent parties that are aligned with, or adverse to, clients of Duff & Phelps. Finally, Duff & Phelps provided an opinion letter to a client of Goldin's General Counsel in connection with an unrelated matter when he was a law-firm lawyer over seven (7) years ago.

(e) In May 2017, Goldin discussed a possible advisory role for certain clients of a law firm (the "Firm") who are parties in interest with respect to one or more Platinum Partners Value Arbitrage Fund L.P. and related funds. Goldin entered into a non-disclosure agreement with the Firm ("NDA") and certain Goldin professionals received confidential information from the Firm and used those materials in connection with presenting a "pitch" to the Firm and some of its clients (the "Pitch"). Goldin was never retained and never received any compensation, and the NDA expired by its terms on June 22, 2017. The Goldin professionals who prepared materials for, and presented at, the Pitch have an obligation under the NDA to maintain any information received in confidence and will do so. Nevertheless, out of an abundance of caution, Goldin has advised the Receiver that it (i) has established an ethical wall to screen professionals who prepared materials for and presented at the Pitch from playing any role in the this matter; and (ii) will not take part in any action the Receiver brings against clients of the Firm who were involved in the Pitch.

28. Goldin further provided the following information to the Receiver as set forth in the Kirschner Declaration:

(a) Neither Goldin nor Mr. Kirschner are, or have been during the pendency of this action, a creditor, equity security holder or insider of the Defendants.

(b) Neither Goldin nor Mr. Kirschner are, or have been, a director, officer or employee of the Defendants.

(c) Neither Goldin nor Mr. Kirschner are have an interest materially adverse to the interests of this 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) Mr. Kirschner is not a relative of any Judge of the United States District Court for the Eastern District of New York, the SEC, or any person employed by the SEC or U.S. Attorney's Office (EDNY).

29. Goldin advised the Receiver that it is involved in many insolvency matters involving financial institutions, and these institutions may have some connection with the Defendants or other parties with an interest in these cases. In the Kirschner Declaration, Goldin disclosed the following pertinent involvements include:

(a) Bank of New York Mellon may have interests aligned with or adverse to those of Goldin's clients in unrelated bankruptcy matters.

(b) Citibank provides banking services, including credit, to Goldin. Goldin has worked on behalf of Citibank and been adverse to Citi in unrelated matters.

(c) Goldin formerly represented Credit Suisse in an unrelated litigation matter. Goldin represented a client adverse to Credit Suisse in a concluded, unrelated matter.

(d) Goldin has been retained by and been adverse to JPMorgan Chase & Co. in unrelated matters.

(e) Goldin represented clients adverse to Pershing in an unrelated matter.

(f) A client for which Goldin is providing Chief Restructuring Officer services is a client of Sterling National Bank.

Relief Requested

30. By this Application, the Receiver seeks entry of an Order, pursuant to Paragraphs 6.F. and 49 of the Receiver Order, authorizing the Receiver to retain and employ Goldin as her financial advisor in this action *nunc pro tunc* to the Appointment Date.

31. The Receiver is asking for the appointment of Goldin *nunc pro tunc* because the Receiver required assistance from Goldin immediately after her appointment with respect to a number of pressing matters, including the transition from Mr. Schwartz to Ms. Cyganowski as the Receiver and the focus on analyzing and liquidating the assets of the Receivership Estates. The Receiver consulted with the SEC about the use of Goldin prior to a court order. The SEC agreed that the Receiver should use Goldin and seek the Court's approval of Goldin *nunc pro tunc* to the Appointment Date.

32. Goldin has not received payment of any fees since the appointment of the Receiver and is not seeking approval of fees they have incurred since the Appointment Date at this time. Payment of fees will be the subject of a separate fee applications to this Court.

Notice

33. The Receiver proposes to serve this Application on (a) the SEC and its counsel; (b) the Defendants and their counsel; and (c) any person or entity that has filed a notice of appearance in this action. In light of the nature of the relief requested, the Receiver respectfully submits that no further notice is necessary.

WHEREFORE, for all the foregoing reasons, the Receiver requests that, in accordance with the Receiver Order, she be authorized, effective *nunc pro tunc* to the Appointment Date, to use Goldin Associates LLC as financial advisor to assist and support her in performing and exercising her rights, remedies, duties, and responsibilities upon the terms, and for the compensation and reimbursement of expenses, as set forth above and that she be granted such other and further relief as the Court deems appropriate.

Respectfully submitted, this 11th day of July, 2017.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski
Court-Appointed Receiver