

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
-v-	:
	:
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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No. 16-cv-6848 (DLI)(VMS)

**DECLARATION OF MELANIE L. CYGANOWSKI**

I, Melanie L. Cyganowski, 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 make this Declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunity Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, and Platinum Partners Liquid Opportunity Fund (USA) L.P. (the “*Receivership Entities*”), in connection with the applications (the “*Applications*”) for orders (i) approving the [Proposed] Second Amended Order Appointing Receiver, Dkt. No. 254, and (ii) adopting a protocol to enable parties in interest, other than the parties named in the caption, to be heard on motions or applications brought before the Court by the Receiver, Dkt. No. 255.

2. Attached hereto under Exhibit 1 is a response to the Applications that was timely delivered to my or my counsel's e-mail address from William C. Nystrom, Esq., on behalf of "a large group of non-insider Platinum Partners Credit Opportunities Fund ('PPCO' or the 'Fund') investors."

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

Executed this 1<sup>st</sup> day of September, 2017, at New York, NY.

Melanie L. Cyganowski  
Melanie L. Cyganowski



August 31, 2017

**Via Service Through the Receiver**

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

Re: SEC v. Platinum Management (NY) LLC, et al.  
Case No. 16-cv-06848-DLI-VMS

Dear Chief Judge Irizarry:

This firm represents a large group of non-insider Platinum Partners Credit Opportunities Fund (“PPCO” or the “Fund”) investors (the “Independent Investors”).<sup>1</sup> By this letter, the Independent Investors respond to the Notice of Proposed Second Amended Order Appointing Receiver (Dkt. No. 254) (the “Second Order”) and the Motion for Order Adopting Protocol (Dkt. No. 255) (the “Protocol”).

**The Second Order**

The Independent Investors appreciate the protections that have been built into the Second Order requiring Court approval of transactions in excess of \$3 million. See Dkt. No. 254-2, ¶ 30. The Independent Investors, however, are concerned by the “at par” caveat at the end of Paragraph 30, which reads: “Notwithstanding anything to the contrary in this Order, the Receiver’s release of a security interest or other assignment or termination of rights in connection with the payoff of a loan, or the settlement of a transaction, at par shall be deemed within the ordinary course of business of the Receivership Entities’ orderly wind down.” Dkt. No. 254-2, ¶ 30. Specifically, it appears the “at par” language could be read to allow the Receiver to sell a “security interest” (a mineral right, for example)

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<sup>1</sup> The Independent Investors include: Beacon Journal Publishing; the Robb Charitable Lead Trust; Bruce Bullen; the Mary G. DeSimone Irrevocable Trust; Norma and Joseph Edmiston; the Bonnie Ellison 2012 Living Trust; Philip and Patricia Faris; the Garatoni Family Foundation; the Garatoni Holdings Investment Partnership; Alicia Garatoni; Michael and Elizabeth Garatoni; Allen Kaplan; Sheldon and Rita Kwiat; James Lampert; William and Doris Loehning; the Kathleen Oram Revocable Trust; the Theresa L. Perlstein Revocable Trust; the William J. Perlstein Revocable Trust; the Steven Singer Revocable Trust; the John & Lori Smith Revocable Trust; the Courtney Solcher Revocable Trust; the Felicia Solcher Revocable Trust; the Gerry Solcher Revocable Trust; the Sally Solcher Revocable Trust; the Whitney Solcher Revocable Trust; the Perry & Ruby Stevens Charitable Foundation Revocable Trust; the Seth Waxman Revocable Trust; the World Traveler Revocable Trust; and the Anthony Wright Revocable Trust.



One Marina Park Drive 15th Floor Boston Massachusetts 02210 Tel 617.778.9100 Fax 617.778.9110

[www.nbparis.com](http://www.nbparis.com)

Hon. Dora L. Irizarry  
August 31, 2017  
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at the “par value” of the underlying loan, when the asset itself may be far more valuable.<sup>2</sup> Based on conversations with counsel for the Receiver, however, the Independent Investors now understand the “at par” language was intended to permit the Receiver to accept “automatic” payments (e.g., a fully matured note) or to end a pre-Receiver’ship transaction (e.g., litigation funding), but otherwise does not empower the Receiver to sell Receivership Property (i.e., in the metal/mining/energy sectors) without Court approval. To alleviate what we view as an ambiguity, and following discussions with the Receiver’s counsel, we propose the last sentence of Paragraph 30 be amended to include after the words “settlement of a transaction” a parenthetical that states: “(e.g., pay out on a life insurance policy or realization of a litigation outcome purchase).”

### The Protocol

The Independent Investors are in favor of the Protocol permitting them “to be heard on motions and applications brought before the Court.” See Dkt. No. 255.<sup>3</sup> Based on conversations with counsel for the Receiver, the Independent Investors understand that subsequent procedures and protocols enumerated by the Receiver and approved by the Court will be implemented for claims procedures and plans of distribution, as would be appropriate here.

Finally, several filings in this action have contained heavy redactions (see, e.g., Dkt. No. 130-1, the Prior Receiver’s First Quarterly Report), thereby severely limiting the Independent Investors’ ability to take informed positions regarding important Receivership matters. This issue is not addressed in the Protocol, but the Independent Investors respectfully request that the Receiver and the Court consider a procedure by which the Independent Investors may access any confidential material submitted to the Court.

Thank you for your kind attention to this matter.

Very truly yours,

/s/ William C. Nystrom  
William C. Nystrom

cc: Hon. Melanie L. Cyganowski (*via email*)  
Adam Silverstein (*via email*)

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<sup>2</sup> For example, the valuation firm, Houlihan Lokey – who has now been retained by the new Receiver – assigned a value to the Gold Recovery Project of between \$55 million and \$114 million, assuming the Receivership invests approximately \$5 million to shore up the position. See Dkt. No. 180 at 2. Conversely, if the position were liquidated today, it would be unable to recover its cost basis of \$10 million (which we assume would constitute “par”). Id. It would be patently unfair to the investors to circumvent judicial review of this very important asset by resort to the “par” exclusion.

<sup>3</sup> Undersigned counsel – who now represent approximately thirty (30) PPCO investors – currently receive ECF notice of all Platinum-related filings. We respectfully request to remain listed for such notices.

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One Marina Park Drive 15th Floor Boston Massachusetts 02210 Tel 617.778.9100 Fax 617.778.9110

www.nbparis.com