

**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 (BMC)(VMS)

**REPLY BRIEF OF RECEIVER IN FURTHER SUPPORT OF HER
APPLICATION FOR AN ORDER APPROVING THE RETENTION
OF HOULIHAN LOKEY CAPITAL, INC.**

Melanie L. Cyganowski, 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”), respectfully submits this reply brief in further support of her application (the “Application”) for an order approving the retention of Houlihan Lokey Capital, Inc. (“Houlihan Lokey” or “Houlihan”), *nunc pro tunc* to September 11, 2017, to provide certain financial advisory and investment banking services. (Dkt. No. 275).¹

¹ To the extent not defined herein, capitalized terms shall have the meaning ascribed to them in the Application for Order Approving the Retention of Houlihan Lokey Capital, Inc. *Nunc Pro Tunc* to September 11, 2017 (Dkt. No. 275.)

Preliminary Statement

In the face the Receiver's application to engage Houlihan Lokey, an experienced and recognized investment banking firm, to market and sell certain significant assets of the receivership, the Receiver received no opposition – not from the plaintiff SEC, not from the defendants, the former insiders of the Receivership Entities, not from any of the Receivership Entities' purported secured creditors, and not from the vast majority of investors in the Receivership Entities – *except* for a single group of investors representing a total of approximately 6% of the Platinum Partners Credit Opportunity ("PPCO") funds (the so-called "Independent Investors"). (*See* Dkt. No. 277, Ex. 1.)

Notably, the Independent Investors "do not oppose the retention of [Houlihan Lokey] with respect to any of the assets listed" in the Application, except for one – the Abdala Tailings Project ("Abdala"). (*See* Dkt. No. 277, Ex. 1, p. 1.) Yet the Independent Investors have not made the substantial showing necessary to overcome the deference due in favor of the Receiver's business judgment, which no party to this action, no secured creditor, and no *other* investors have questioned, in this regard. The Receiver's judgment in engaging Houlihan Lokey to market and sell the assets in the Application, including Abdala, was based on a developed understanding of both the assets and Houlihan's capabilities, and the Independent Investors have come forward with no reason (other than speculation) to set aside (or even conduct a hearing to scrutinize) her judgment.

Accordingly, for the reasons set forth in the Application, and those more fully described below, the Court should approve Houlihan Lokey's retention as requested by the Receiver, inclusive of Abdala. At the very minimum, the Court immediately should approve – as unopposed – Houlihan Lokey's retention with respect to the marketing and sale of all of the

assets listed in the Application other than Abdala (the Life Settlement Portfolio, Urigen, LC Energy and the Litigation Finance Portfolio), so that the marketing and disposition of those assets can continue expeditiously.

Argument

The decisions of an SEC receiver are governed by the business judgment rule: “In carrying out [his or her] duty, the receiver must exercise ordinary care and prudence, that is, the same care and diligence that an ordinary prudent person would exercise in handling his or own estate, or under like circumstances.” *Securities Exch. Comm’n v. Kirkland*, 2012 WL 3871920, at *2 (M.D. Fla. Aug. 1, 2012 (citations omitted)). Indeed, in prior pleadings, the Independent Investors themselves (or at least a subset of them) have recognized this: “It is for the receiver as fiduciary to the Fund’s investors, and not [any one party (or non-party)], to make the determination of what course of action best maximizes the recovery available to the investors.” (The Independent Investors’ Response to the Securities and Exchange Commission’s Application for an Order to Show Cause (the “Independent Investor Limited Objection”) (Dkt. No. 201), at p. 8) (citations omitted).

Here, the Receiver engaged Houlihan Lokey following considerable analysis, including a review of its affiliate’s, Houlihan Lokey Financial Advisor, Inc.’s, working valuation of Abdala, and ongoing discussion with Houlihan, whose capabilities are generally known to the Receiver as a result of her professional experience and were specifically explored by the Receiver during discussions with Houlihan. The retention also followed months of the Receiver and her professional team gaining an understanding of, and acquiring hands-on experience with, the receivership assets, including Abdala. Based on her experience as Receiver of the Receivership Entities, her analysis of and experience with the particular receivership assets in issue, her

professional experience with and knowledge of Houlihan Lokey, and her vetting of Houlihan in connection with this particular assignment, the Receiver determined, in her business judgment, that Houlihan Lokey is well suited to market and dispose of the assets in issue, including Abdala; and she negotiated an engagement structure designed to incentivize Houlihan Lokey to achieve the fair market value of each of these assets, including Abdala.

Notably, the Independent Investors agree with the Receiver's exercise of business judgment with respect to engaging Houlihan to market and dispose of the Life Settlement Portfolio, Urigen, LC Energy and the Litigation Funding Portfolio – each of which (like Abdala) can be characterized as a unique or specialized asset. Indeed, that is one of Houlihan Lokey's specialties – the marketing of unique assets around the world, especially in distressed situations. Rather, the Independent Investors question only the Receiver's business judgment with respect to Abdala.

The Independent Investors' objection to engaging Houlihan Lokey to market and dispose of Abdala is based on dated information, a forced speculative investment of \$5 million, and a fundamental misunderstanding of the Receiver's role in this wind-down. The Independent Investors largely rely on information provided by PPCO's former managers, who have been criminally charged with intentionally inflating asset values and who, during an investor call in January 2016, apparently “advised investors of projected returns of between \$450 and \$550 million.” (Dkt. No. 277, Ex. 1, at p. 2.) They also cite the prior Receiver's preliminary assessment that Abdala has “*potential* to generate substantial returns with the expenditure [*i.e.*, investment] of modest additional capital” (*id.*; emphasis added), and his letter to the Court regarding his disagreements with the SEC that led to his resignation (Dkt. 180), in which he recognized that “[v]aluation firm Houlihan Lokey valued [Abdala] at [the much more modest]

range of \$55 million to \$114 million, assuming that PPCO invested \$5 million into the Project to get it started, but concluded that PPCO would be unable to recover its cost basis (approximately \$10 million) if the Receiver tried to sell it today.” (*Id.*)

All of this information was known to the Receiver, evaluated and filtered by her in the course of her discussions with Houlihan Lokey, and was considered when she made the business judgment to engage Houlihan Lokey to dispose of the assets listed in the Application, including Abdala. The Independent Investors have come forward with no basis for questioning – let alone setting aside -- her judgment in engaging Houlihan Lokey notwithstanding the foregoing assertions by the former managers of PPCO and the prior Receiver. Notably, the former managers of PPCO, many of whom are defendants in this proceeding and whose optimistic assessments the Independent Investors rely upon, do not object to the Receiver’s business judgment to engage Houlihan Lokey to market and sell Abdala.

The Independent Investors’ argument for overturning the Receiver’s business judgment is also premised on compelling the Receiver to invest millions of dollars into Abdala. The Independent Investors contend that “the higher end valuations [for Abdala] can only be realized with a capital investment by the Fund to demonstrate the project’s efficacy.” (Dkt. No. 277, Ex. 1, at p.1.) Of course, this calls for the Receiver – who, like the prior Receiver, is a lawyer, not a registered investment advisor – to make speculative investment decisions in a fund that is in the process of wind-down following an alleged massive fraud. That is *not* the role of the Receiver, whose mandate is to wind-down, not make invest capital in illiquid and speculative investments in, the Receiver Entities’ complex assets.

The Second Amended Order Appointing Receiver, recently entered by the Court (Dkt. No. 276), charges the Receiver with the mandate of “[a]t all times [using] the Receiver’s best

efforts to maximize the value realized upon the disposition of Receivership Property, considering the costs and benefits of any proposed transaction for the disposition of Receivership Property and taking into account the risk profile, and the expected time horizon for the disposition, of such Receivership Property.” (*Id.*, at ¶31). The Independent Investors have come forward with no showing -- nor basis to believe -- that the Receiver has failed to perform this duty.

Conclusion

For all the foregoing reasons, and those set forth in the Application, the Court should reject the Independent Investor Limited Objection and approve the retention of Houlihan Lokey (as agreed to by the Receiver) *nunc pro tunc* to September 11, 2017.

Dated: New York, New York
October 30, 2017

Respectfully submitted,

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein

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