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VIA ECF
Honorable Brian M. Cogan
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *SEC v. Platinum Mgmt. (NY) LLC, et al.*, No. 1:16-cv-06848-BMC

Dear Judge Cogan:

This firm represents Melanie L. Cyganowski in her capacity as Court-appointed receiver (the "Receiver") of the Platinum Funds ("Platinum"). We write in response to the letter from Norman I. Klein, Esq., dated May 4, 2018, requesting a pre-motion conference with respect to a proposed fee application by his client, Schafer & Weiner, PLLC ("S&W") (Dkt. #6704).

As explained in further detail below, S&W is a law firm that neither the prior receiver (Dkt. #183) nor the present Receiver (Dkt. ##281-82) ever sought a Court order to retain. That is largely because S&W's prior representation of Platinum (as Mr. Klein's letter alludes to) has raised certain ethical questions. For these reasons (which we have explained directly to S&W), the Receiver has not found it appropriate to date to devote receivership resources and Court attention to what undoubtedly will be a contested fee application by a non-retained professional. Nevertheless, S&W's recent behavior of injecting itself into another proceeding for the sole purpose of asserting positions adverse to the receivership has led the Receiver to conclude that S&W's fee application should be heard (and denied), in conjunction with a hearing, to be held at a time and in a manner determined by the Court, on the validity and enforceability of certain loan participation agreements that S&W prepared and is now seeking to enforce. Those participation agreements purport to give S&W and certain other professionals a "first-out participation" in one of Platinum's loans (the Arabella Loan)[1], and to sell to an investor, with which S&W has aligned itself, a participation in the Arabella Loan so as to pay S&W's and other professionals' pre-receivership fees. The Receiver thus joins in the request for a pre-motion conference.

S&W (an approximately 10 lawyer firm located in Bloomfield Hills, Michigan) apparently was retained by Platinum prior to the receivership in August 2015 to represent it in connection with a workout strategy concerning the Arabella Loan, a loan, then in default, to a Texas-based oil exploration venture. In July 2016, S&W prepared two instruments purporting to give S&W and certain other professionals (the "Professionals") direct rights in the Arabella

[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in Mr. Klein's letter.

Loan. On July 1, 2016, S&W had Platinum execute a "Guaranty" (Dkt. #128-7) that it drafted in favor of S&W and the Professionals, in which Platinum – in order to induce S&W and the Professionals to continue working on the Arabella workout strategy despite Platinum liquidity issues – purported to "guaranty" payment of, and to subordinate Platinum's claims under the Arabella Loan to, the Professionals' fees. Two weeks later, S&W had Platinum execute an "Amendment to Guaranty" (Dkt. #128-8), in which Platinum – for no apparent additional consideration – purported to give S&W and the Professionals a "first out participation" in the Arabella Loan "if [Platinum] either (a) forecloses on its Collateral under the Note Documents, or (b) sells or otherwise assigns the Note and the Note Agreement."

On December 19, 2016, this proceeding was commenced, and the prior receiver was appointed. (Dkt. ## 1-6) The Receiver Order, entered that day, authorized the prior receiver "to solicit persons and entities ('Retained Personnel') to assist the Receiver in carrying out the duties and responsibilities described in this Order," but made clear that "[t]he Receiver shall *not* engage any Retained Personnel *without first obtaining an Order of the Court authorizing such engagement.*" (Dkt. #6 ¶ 49; emphasis added) In contrast to other limited scope professionals, the prior receiver did *not* seek a Court order to engage S&W. (Dkt. # 183) Rather, in the face of the ethical questions discussed below, the prior receiver specifically determined *against* engaging S&W. (Dkt. #180, p.3) Hence, Mr. Klein's assertion that S&W falls within the definition of "Retained Personnel" "entitled to reasonable compensation," like "every other professional involved in this case has received" (Dkt. #320, at n.3 & p.3), is not accurate.

The ethical questions surrounding S&W's representation of Platinum arise from a "Participation Agreement," prepared by S&W, that the prior receiver entered into on December 28, 2016 with an entity called 30294 LLC ("30294"), owned by another Bloomfield Hills attorney, Craig Bush. In the Participation Agreement, the prior receiver purported to sell a 45% interest in the Arabella Loan to 30294 for $500,000 that was to be used "exclusively to fund professional fees," including $180,000 in S&W *pre-receivership* fees that was paid with the participation proceeds. Why yet another participation in the Arabella Loan was sold to pay pre-receivership fees of S&W and the Professionals – which already had agreed to continue representing Platinum in return for their own purported participation in the Arabella Loan – raises serious questions that have yet to be answered. S&W's managing partner, Michael Baum, has testified that – notwithstanding the commencement of receivership proceedings in which pre-receivership claims are supposed to be paid only pursuant to an approved Plan of Liquidation – he persuaded the prior receiver's staff that S&W and certain other Professionals should be given an immediate payment priority because they "could not continue to work without being paid at least some of their past-due receivables" (Dkt. #128-2 ¶47), despite the fact that they had agreed to continue working in return for the "Guaranty" and "Amendment to Guaranty." S&W's

involvement with Platinum's purported sale of 45% of a receivership asset in order to pay S&W's and other Professionals' pre-receivership fees triggered ethical questions by the SEC, which questions the prior receiver has agreed "require further scrutiny." (Dkt. No. #142 n.1)[2]

In light of the questions raised by the SEC and shared by the prior receiver and current Receiver, we explained to S&W the inappropriateness of addressing S&W's fee application until after the circumstances of the Participation Agreement have been fully investigated and any ethical questions about S&W's representation of Platinum in connection therewith have been resolved. Indeed, contrary to Mr. Klein's suggestion that the Receiver simply has ignored S&W's proposed fee application – asking for post-receivership fees ($459,729.25) that are not much less than the total amount of post-receivership fees ($526,768.58) paid to *all* (19) other limited scope professionals combined (Dkt. #294) -- I spoke for over an hour with Baum and another S&W partner on December 20, 2017 explaining these issues to them.

S&W apparently now has determined that the best path forward is to antagonize the Receiver. The same that day that Mr. Klein filed his letter in this Court, S&W filed a pleading in a contested matter to which it is not even a party in AEX's Texas bankruptcy case for the sole purpose of opposing the receivership. In the contested matter, 30294 seeks to transfer, pursuant to Bankruptcy Rule 3001(e), 45% of Platinum's bankruptcy claim to 30294 supposedly per the Participation Agreement. Over the Receiver's objection that all issues concerning the validity and enforceability of the Participation Agreement should be adjudicated in this Court, the Bankruptcy Court conducted an evidentiary hearing, in which Baum traveled to Texas specifically to oppose the receivership. The Bankruptcy Court has reserved ruling on the application and the Receiver's objections thereto. Because of 30294's and S&W's recent coordinated effort to transfer receivership property in AEX's bankruptcy case to 30294, the Receiver believes it is now necessary to raise these issues in this Court. The Receiver thus seeks a pre-motion conference to discuss the timing and nature of a hearing to adjudicate the validity and enforceability of the instruments that S&W prepared, as well as S&W's proposed fee application, which the Receiver opposes. The Receiver has consulted with the SEC, which joins in the request for a pre-motion conference.

Respectfully,

Adam C. Silverstein

[2] S&W's retention of a retired Bankruptcy Judge from Michigan, Steven Rhodes, to give an opinion on the existence of any conflicts of interest is an acknowledgement of the ethical questions surrounding its representation.