

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (BMC)

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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**NOTICE OF MOTION OF  
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN  
ORDER APPROVING THE SALE OF THE RECEIVERSHIP’S RIGHTS IN  
AND TO A GOLD TAILINGS POND KNOWN AS “ABDALA” AND AUTHORIZING  
HER TO PAY THE FEES AND EXPENSES OF PLATINUM’S BRAZILIAN COUNSEL**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”), and upon the Declaration of Houlihan Lokey Capital, Inc., as well as upon the

Receiver's Memorandum in Support of the Sale Motion, the Receiver moves before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an order: (a) approving the sale of the Receivership's rights in and to a gold tailings pond in central Brazil known as "*Abdala*" and (b) authorizing her to pay the fees and expenses of Platinum's Brazilian counsel, Chediak Advogados, whose retention this Court approved by Order Authorizing the Receiver's Application to Retain and Pay Limited Scope Legal Professionals entered December 26, 2017, Dkt. No. 294, from the proceeds of the Abdala sale (the "*Motion*").

**PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be made in writing and (i) if by a party, electronically filed with the District Court or (ii) if by a non-party, electronically mailed to the Receiver at her e-mail address, [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com), in each case so as to be actually received no later than August 3, 2018.

**PLEASE TAKE FURTHER NOTICE** that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion, without further hearing or notice.

Dated: July 27, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein

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*Attorneys for Melanie L. Cyganowski, as Receiver*

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

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
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Plaintiff,	:
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-v-	:
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PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
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	:
Defendants.	:
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No. 16-cv-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER,  
IN SUPPORT OF MOTION TO APPROVE SALE OF ABDALA AND  
TO PAY BRAZILIAN COUNSEL FROM THE SALE PROCEEDS**

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 (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*” or, sometimes, following the commencement of this action, the “*Receivership*”), in support of my motion for entry of an order

(the “*Motion*”) (a) approving the sale of the Receivership’s rights in and to a gold tailings pond in central Brazil known as “*Abdala*” and (b) authorizing me to pay the fees and expenses of Platinum’s Brazilian counsel, Chediak Advogados (“*Chediak*”), whose retention this Court approved by Order Authorizing the Receiver’s Application to Retain and Pay Limited Scope Legal Professionals entered December 26, 2017 [Dkt. No. 294] (the “*Retention Order*”), from the proceeds of the Abdala sale.

### INTRODUCTION

2. I am pleased to report that, after eight months (not including pre-marketing preparation time), the rigorous efforts undertaken by Houlihan Lokey Capital, Inc. (“*Houlihan*”) to market and sell Abdala and by Brazilian counsel, Chediak, to resolve all local legal impediments, resulted in a robust competitive bidding process and in the Receivership achieving what I and my professionals believe is Abdala’s fair value. If approved, the sale would yield the Receivership \$27.5 million in cash at closing, plus additional and potentially highly valuable consideration based on resource validation results and future mining revenues. Specifically, in addition to the cash at closing, the Receivership will receive \$3 million in cash royalty advances approximately six months after closing if gold content is validated to exceed a realistic threshold, as well a 7.5% royalty on cash revenues after the purchaser achieves a 3.0x multiple of invested capital. As further described below, assuming a royalty advance but no back-end royalties, the proposed sale would result in a 1.8x return on Platinum’s invested capital, a significant return on a Receivership asset.

3. As the Court is aware, Abdala has been a focal point of the Receivership since its inception. At the time the Securities and Exchange Commission (“*SEC*”) commenced this action in December 2016, Platinum’s pre-Receivership management had valued Abdala on Platinum’s books at over \$120 million and had been promoting the investment in investor calls and/or

newsletters as having potential investment upside well in excess of that figure. During a meeting I had with Platinum's former Chief Investment Officer, Mark Nordlicht, and his counsel earlier this year, he implored me to invest Receivership funds into developing a processing plant to process the gold tailings and speculated that, with the investment of such additional capital, the Receivership eventually could realize up to \$300 million or more from Abdala.

4. Relying, in part, on prior management's valuations and assumptions and, in part, on his and his professionals' own valuations and due diligence, including a visit by his representatives to Brazil, the prior receiver, Bart M. Schwartz (the "**Prior Receiver**"), expressed similarly bullish views regarding Abdala. In a letter to the Court dated June 23, 2017, the Prior Receiver approvingly cited a valuation valuing "the Project at a range of \$55 million to \$114 million, assuming that PPCO invested \$5 million into the Project," while simultaneously sharing the assessment that "PPCO would be unable to recover its cost basis (approximately \$10 million) if the Receiver tried to sell it today." (Letter to Chief Judge Dora L. Irizarry from Bart M. Schwartz, dated June 23, 2017 [Dkt. No. 180])

5. The bullish views of both prior management and the Prior Receiver have resulted in a hyping of the asset among Platinum investors, certain of whom have declared "Abdala . . . to be PPCO's most valuable asset, worth between \$50 and \$550 million, depending upon the amount of recoverable gold in the tailings pond" and who, consequently, opposed the Receivership's retention of Houlihan to market and sell the Abdala asset, urging the Court instead to afford the investors the opportunity to argue in favor of "alternatives to the liquidation of Abdala." (Letter to Honorable Brian M. Cogan from William C. Nystrom, dated October 23, 2017 [Dkt. No. 277])

6. In view of the intense spotlight on the Abdala asset as a result of prior management's and the Prior Receiver's lofty valuations and the resulting elevated expectations

of Platinum's investors, no Platinum asset has garnered more of my and my professionals' attention than Abdala. Knowing the level of scrutiny that any disposition of Abdala would generate, it was vital to me that any issues that might prevent or chill prospective interest in the asset be promptly identified and redressed, that the asset be aggressively and exhaustively marketed to a targeted roster of prospective qualified purchasers, and that Houlihan and the Receivership team devote as much time and resources as necessary to achieve the fair value of the asset.

7. Without question, my team and I focused keenly on achieving fair value for the disposition of Abdala. We share the view that Abdala is the Receivership's most valuable asset although, as described below and in the accompanying Declaration of Houlihan Lokey Capital, Inc. (the "*Houlihan Dec.*"), it is not as valuable as some have believed. For the reasons set forth below, and those set forth in the contemporaneously filed Memorandum of Law and the Houlihan Dec., I respectfully request that this Court grant the Motion.

#### **BACKGROUND ON THE ABDALA INVESTMENT**

8. The summary set forth below is based on information contained in Platinum's books and records and/or provided by the Platinum legacy portfolio manager who managed the Abdala investment, Elliot Bertram ("*Betram*")—whom the Receivership has continued to employ in recognition of Abdala's significance to the Receivership—as well as the Receivership's retained professionals, including Houlihan.

9. Abdala refers to the Receivership's contract rights to extract gold for a period of ten years from a tailings pond located near Cuiababa, Brazil. The tailings pond is an impoundment approximately 300 meters wide by 300 meters long and 20 meters deep containing dried slurry (*i.e.*, sand and gravel) from the adjacent Abdala gold mining operation. The Abdala gold mine involved a relatively unsophisticated operation. The mine consists of two open pits,

which feed a processing facility that utilizes hammer mills and basic Brazilian-made gravity concentrators to extract gold.

10. Platinum's investment in Abdala resulted from loans totaling, according to Platinum's books, \$12.3 million that it extended to Resource Holdings, Inc. ("**RHI**"), a development-stage company that leased equipment and provided working capital to Brazilian gold mines. With the funds advanced from Platinum, RHI, in turn, financed the owner of the Abdala gold mine, Reginaldo Luiz De Almeida Ferreira ("**Rico**"), whose loans from RHI subsequently were assigned to Platinum. The loans to RHI and Rico went into default, and, following a settlement with RHI, Platinum began foreclosure proceedings against Rico. In or about November 2015, following years of contentious litigation and negotiations, Platinum and Rico reached an agreement whereby Platinum received ten years of mining rights in and to the Abdala tailings pond in settlement of the loan obligations. The settlement was recorded with the Brazilian court in January 2016.

11. In light of the contentious dealings between Platinum and Rico, Platinum determined to locate the processing plant it would need to develop in order to process the gold tailings on a nearby piece of property, which it subleased from a sub-lessor called Acqua Investments ("**Acqua**").

12. In or about mid-2015, Platinum engaged JDS Energy & Mining, Inc. ("**JDS**"), a known expert in the mining field, to oversee sampling, assaying, resource estimation and gold recovery test work on the tailings pond. JDS provided a written report of its conclusions to Platinum in January 2016. Based on 169 samples, JDS estimated an average grade (head grade) of 24 grams of gold per ton of slurry (24 g/t). However, JDS noted significant variability across the samples tested, stating that "given the nature of the samples and the high variability observed for assays of duplicated samples, caution must be used when estimating head grade and

production performance of the processing facility.” JDS also provided a permitting and construction timeline, a capital expenditure (CAPEX) budget for developing a processing plant, and financial projections reflecting net operating income for the duration of the project. JDS forecasted that, based on a plant license submission to local authorities by mid-July 2017, the plant could be in production within a year and a half to two years at a cost of \$6.1 million to operation, and an additional \$2.5 million in CAPEX during the first year of operation. However, as a result of Platinum’s liquidity issues and the Receivership, steps to develop the processing plant were not undertaken.

13. The appropriateness and ability of the Receivership to invest millions of dollars of capital in a gold recovery processing operation was one of the central disputes that divided the Prior Receiver and the SEC and which culminated in his resignation. (*See* Dkt. Nos. 142, 170, 179, 180). Following my appointment as Receiver and my comprehensive review, with my professionals, of all of the Receivership’s assets and liabilities, I concurred with the SEC that Abdala, like Platinum’s other marketable assets, should be monetized in an orderly fashion. With Court approval, I retained Houlihan, a highly-regarded and experienced investment banking firm, to orchestrate the marketing and sale of Abdala. In granting my application to retain Houlihan—over the objection of certain investors who requested that Abdala be excluded from the scope of Houlihan’s services—the Court observed:

The Receiver is not tasked with making speculative investments. Instead, she is entrusted with the responsibility to prudently wind-down the Receiver Entities and dispose of the Receivership Assets in a manner that safely returns to stakeholders what value can be salvaged. She is not empowered to jeopardize that return by indulging in risky investment opportunities with the very money she has been charged to return to the victims of alleged years’ long fraudulent conspiracies. It is clear to the Court that these investors are frustrated by their inability to realize the investment returns they were promised, but that frustration does not justify the Receiver using the limited remains of alleged conspiracies to look for South American gold. (Dkt. No. 285)



14. I obviously agree with, and have been guided by, the Court's observations.

### **THE MARKETING AND SALE OF ABDALA**

#### **A. Houlihan's Background and Experience**

15. As mentioned, with authority granted by this Court, I previously retained Houlihan to assist me with the marketing and sale of, among other assets, Abdala. Pursuant to that retention (Dkt. Nos. 275, 285), and based upon the parameters of the sale contemplated herein, Houlihan Lokey will be entitled to a fee of \$1,375,000 upon closing of the sale.

16. Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services. Houlihan Dec. ¶ 3.

17. Among areas of expertise, Houlihan is an experienced and recognized "liquidity advisor," with experience across a broad spectrum of esoteric investments, including equity, credit, participations or other exotic securities. *Id.* ¶ 4. Houlihan also has extensive experience in Latin America, including Brazil, having executed transactions involving assets across the region, and has a dedicated metals and mining team. *Id.* Houlihan's relevant experience in Brazil includes having previously advised on the restructuring of (i) Jaguar Mining Inc., a gold mining operator with mining complexes and a development project located in Brazil, and (ii) Mirabela Nickel Limited, an operator of a mine and processing plant located in Brazil. *Id.*

#### **B. The First Round of Marketing Activity**

18. After extensive preparation, Houlihan launched a comprehensive marketing process on December 13, 2017, contacting a list of 258 prospective purchasers, including special situations funds, alternative asset managers with mining expertise, family offices, sovereign wealth funds, private equity funds and natural resource focused funds, as well as strategic and local investors with operations in Brazil, constructed from Houlihan's knowledge of emerging

market and mining market participants and solicitations by investors who proactively contacted the Receiver to express interest in acquiring Abdala. *Id.* ¶ 6. Of the 258 prospective purchasers contacted, 26 executed non-disclosure agreements and were provided with access to an online data room that included, among other things, the analysis and reports completed by JDS (the “*JDS Reports*”). *Id.*

19. Following this first round of marketing activity, eight prospective purchasers submitted initial indications of interest. Houlihan’s discussions with prospective purchasers identified a number of factors that limited the interest in the Abdala asset, including questions about the reliability of the JDS Reports’ head grade conclusions, as well as operational, legal and local risks. *Id.*

20. One of the steps I considered in mitigating at least the questions surrounding the reliability of JDS’s findings was to commission additional resource validation of the tailings (*i.e.*, sampling, assays and tests of the tailings in accordance with National Instrument 43-101, an industry standard for resource validation). After consultation with Houlihan and the Receivership’s professionals, I ultimately decided against it. Resource validation, done to the NI 43-101 standard, is an expensive and time consuming process that would have potentially added six months to an already lengthy marketing and sale process, and cost the Receivership up to \$1 million in direct out-of-pocket expenses, in addition to tens, if not hundreds, of thousands of dollars in additional monthly charges (at a rate of approximately \$30,000/month) for security and other recurring expenses due to the Receivership’s extended horizon for owning the asset. Furthermore, I concluded that the downside risk - that additional testing would result in a lower head grade than that found by JDS - was equal to, if not greater than, the upside potential that additional testing would confirm JDS’s head grade estimates.

**C. The Second Round of Marketing Activity**

21. After determining not to commission resource validation, and in consultation with Houlihan, I invited five bidders to complete their due diligence and submit final bids. This second round of marketing activity included each of the five bidders conducting a site visit to the tailings pond, accompanied by each of Houlihan, JDS and Bertram. *Id.* ¶ 9. In addition to the site visit, each bidder was granted significant access to JDS, Platinum's local Brazilian counsel, Chediak and Leite, Tosto e Barros Advogados ("*Leite, Tosto*"), and Platinum's portfolio manager, Bertram.

22. During the course of the second round, Acqua purported to terminate the sub-lease for the land on which Platinum contemplated building, and any purchaser would be expected to build, a processing plant. The sub-lease termination was a potential existential threat to the sale process, and required immediate action. With the critical assistance of Chediak and Leite, Tosto, and after extensive negotiations, the Receivership negotiated a new lease directly with the land's owner, Joe Moacir Witzak, Joe Moacir Witzak Junior and Josiance Maria Witzak Soares, and re-set the deadline for final bids.

23. Houlihan received final bids from four bidders. After the initial deadline, two of the bidders continued to significantly improve their bids. The result was a competitive bidding process involving sophisticated market participants that provided me with a high level of confidence that a fair value would be achieved.

**D. The Winning Bid**

24. Based on a thorough analysis of the economic and non-economic factors of the final bids and in consultation with Houlihan and the Receivership's professionals, all as informed by JDS' operating assumptions and the experience of local advisors including Chediak and Leite, Tosto, I have entered into a purchase agreement, subject to Court approval, to sell Abdala to CB

Midas Holdings, LLC and CB Midas Brazil Participações Ltda. (each a Centerbridge Partners, L.P. affiliate, and hereafter individually and collectively referred to as “*Centerbridge*”). Centerbridge Partners, L.P. is a multi-strategy private investment firm with approximately \$28 billion in capital under management as of March 2018 and which has extensive experience both in Brazil and in mining ventures.

25. Centerbridge’s winning bid consists of the following three components: (i) \$27,500,000 in cash at closing, plus (ii) an additional \$3,000,000, creditable against future royalty payments, contingent on the results of required additional resource testing of the tailings pond yielding a head grade of at least 9 g/t (the “*Conditional Payment*”), plus (iii) a royalty of 7.5% of cash revenues after Centerbridge achieves a 3.0x multiple of invested capital (“*MOIC*”). The structure of the deal was designed to generate a substantial upfront cash payment to the Receivership, while, at the same time, permitting the Receivership to significantly enhance its return in the event that the tailings pond has significant recoverable gold, as JDS has estimated.

26. Centerbridge’s bid, if approved by the Court, would result in the Receivership receiving a significant return on Platinum’s invested capital in Abdala. According to Platinum’s books and records, the total amount of capital that Platinum invested in Abdala, both before and during the receivership, is approximately \$16 million, consisting of approximately \$12 million in loans to RHI and an additional approximately \$4 million in legal and other costs invested to protect and preserve the asset. Disregarding all potential royalty payments but assuming that the Conditional Payment is received, the proposed sale to Centerbridge results in a 1.8x return on invested capital to investors (*i.e.*, \$30,500,000 in gross sale proceeds, less Houlihan Lokey’s transaction fee, divided by \$16,000,000 in invested capital). In my experience for over a year as Receiver of Platinum, a 1.8x return on invested capital is among the best returns achieved over the entire Receivership portfolio.

27. In addition, I have been unconvinced by the book values that prior management placed on Abdala. The timing and amount of the elevated valuations coincides with the liquidity issues that Platinum was experiencing and the allegedly fraudulent conduct of which its management has been accused. According to Platinum's books and records, prior management valued Abdala on its books in the range of \$12 to \$15 million until the fourth quarter of 2015, when the book value then skyrocketed to \$50 million. The book value increased to \$51.6 million during the first quarter of 2016. It then nearly doubled to \$100 million in the second quarter of 2016 and further to over \$122 million in the third quarter of 2016.

### **THE PSRA AND CLOSING**

28. The Purchase, Sale and Royalty Agreement (the "*PSRA*") among Platinum Partners Opportunities Master Fund LP ("*PPCO*"), West Ventures LLC (an entity wholly owned by PPCO and, with PPCO, hereafter individually and collectively referred to as "*Platinum*"), CB Midas Holdings, LLC and CB Midas Brazil Participações Ltda. is dated as of July 24, 2018, and provides for a closing of the transaction two business days after all closing conditions have been satisfied, including approval of the transaction by this Court.

29. Under the PSRA, Platinum has agreed to sell, and Centerbridge has agreed to purchase, all of Platinum's right, title and interest in and to Abdala in return for aggregate consideration consisting of (a) closing purchase consideration of \$27,500,000, (b) a royalty advance of \$3 million in the event that resource validation (an independent resource validation and report carried out with respect to the tailings pond in accordance with National Instrument 43-101 standards within six months of the Closing) indicates an average grade of commercially recoverable gold equal to or greater than nine (9) grams per ton, and (c) royalty consideration of 7.5% of cash revenue resulting from mining and/or milling activities upon the property after Centerbridge has achieved a 3.0x multiple of invested capital.

30. The PSRA provides that the sale is on an “as is” “where is” basis, with only limited representations and warranties, and no representations or warranties concerning the condition of the tailings pond or the quantity of its gold content.

31. The PSRA may be terminated by Platinum in the event of Platinum’s acceptance of a Superior Offer, but, in such event, Platinum is required to pay to Centerbridge a Superior Offer Termination Fee (or break-up fee) equal to 10% of the gross value of cash, securities and other assets paid by an acquirer for Abdala.

### **COMPENSATION TO CHEDIK**

32. The Court approved the Receivership’s retention of Chediak in the Retention Order.

33. Pursuant to the Retention Order, I was authorized to pay Chediak “up to \$13,727.50 in fees and \$1,431.75 in expenses in connection with services rendered during the First Application Period, and authorized, but not required to pay Chediak up to \$50,000 for any additional reasonable fees and expenses incurred after May 31, 2017, without further order of this Court.” [Dkt. No. 294]

34. The services of Chediak were integral and vital to the marketing and sale of Abdala. Chediak interfaced with the bidders and counsel for the bidders, who had ongoing questions and concerns regarding applicable laws and regulations governing the operation of the tailings pond. After Acqua terminated the sub-lease on which Platinum’s—and any successor purchaser’s—plant would be located for processing the gold tailings, Chediak negotiated the terms of a new lease for the site. It also continued to oversee pending litigation involving the Abdala project in Brazil.

35. Following the Court’s approval of Chediak’s retention, and in accordance with the provisions in the Retention Order, the Receivership has paid Chediak a total of \$44,381.14 for

services rendered through the end of February 2018, leaving me with authority under the Retention Order to pay Chediak an additional \$5,618.86 without further order of the Court. Chediak's invoices from March 2018 to date, which have been reviewed and determined to be appropriate, total \$66,992.33. Court approval authorizing me to pay Chediak from the proceeds of the Abdala sale (if approved) an additional \$61,373.47 for current outstanding legal fees and expenses, as well as up to an additional \$25,000 for additional legal fees and expenses associated with closing and post-closing representation, is therefore requested.

### **DISCLOSURE OF OTHER CLOSING COSTS**

36. In addition to payment to Chediak, certain other significant fees and expenses will be paid from the proceeds of the sale (if approved). Pursuant to the terms of Houlihan's approved retention (Dkt. Nos. 275, 285), and based upon the parameters of the contemplated sale, Houlihan will be entitled to a fee equal to 5% of cash consideration—or \$1,375,000—upon the closing of the sale.

37. In addition, as the Court previously approved and authorized [Dkt. No. 301], Leite, Tosto will be paid a lump sum payment of \$125,000 from the sale proceeds.

38. Furthermore, JDS, a mining consultant that Platinum had engaged prior to the Receivership and which has continued to perform work on the asset as an ordinary course expense, will apply at closing \$318,090 in outstanding fees and expenses to the remaining \$556,450 that was paid to it by Platinum as a retainer prior to the commencement of this action and remit to the Receivership the balance.

39. The foregoing is not intended to reflect every expense related to Abdala that the Receivership will pay at or after the closing, but reflects the significant Abdala-related expenses that will be paid.

**CONCLUSION**

40. For the reasons set forth herein, I respectfully request that this Court approve the Motion and enter the Proposed Order, attached as Exhibit A hereto.

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

Executed this 27<sup>th</sup> day of July, 2018, at New York, New York.

/s/ Melanie L. Cyganowski  
Melanie L. Cyganowski



**EXHIBIT A**

**Proposed Order**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (BMC)

PLATINUM MANAGEMENT (NY) LLC; :  
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JOSEPH SANFILIPPO; and :  
JEFFREY SHULSE, :

Defendants. :  
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**[PROPOSED]**  
**ORDER APPROVING RECEIVER’S MOTION FOR ORDER**  
**APPROVING THE SALE OF ABDALA AND TO PAY THE OUTSTANDING FEES**  
**AND EXPENSES OF BRAZILIAN COUNSEL FROM THE SALE PROCEEDS**

THIS MATTER coming before the Court on the Motion of Melanie L. Cyganowski, the duly appointed receiver herein (the “*Receiver*”), for entry of an order approving the sale of Abdala [Dkt. No. \_\_\_\_] (the “*Motion*”)<sup>1</sup> and the Court having considered the Motion and exhibits and other documents filed in support of the Motion; and the Court having found that the Motion complies with applicable standards for granting the relief requested therein and that the transaction contemplated thereby was conducted in good-faith and at arms’ length by the parties thereto; and after due deliberation and for good and sufficient cause shown; it is hereby

**ORDERED** that the Motion is granted; and it is further

<sup>1</sup> Capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

**ORDERED** that the PSRA and the transactions set forth in the PSRA are approved; and it is further

**ORDERED** that the interests being sold pursuant to the PSRA are being sold free and clear of any and all liens, which such liens, to the extent they exist, shall attach only to the proceeds of the transaction; and it is further

**ORDERED** that the Receiver is authorized to consummate the sale and other transactions contemplated by the PSRA once the conditions to closing set forth therein have been satisfied or waived; and it is further

**ORDERED** that, at the closing of the sale contemplated by the PSRA, the Receiver is authorized to pay Chediak a total of \$61,373.47 in outstanding fees and expenses in connection with services rendered to the Receiver in connection with Abdala, and up to an additional \$25,000 for legal fees and expenses associated with closing and post-closing representation.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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COMMISSION, :  
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No. 16-cv-6848 (BMC)

**DECLARATION OF HOULIHAN LOKEY CAPITAL, INC.  
IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE  
OF ABDALA AND TO PAY THE OUTSTANDING FEES AND  
EXPENSES OF BRAZILIAN COUNSEL FROM THE SALE PROCEEDS**

I, Paul Sanabria, 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 Managing Director of Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”), which has been retained by Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners

Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”), pursuant to an order of this Court dated November 11, 2017 (the “*Houlihan Appointment Order*”), and in support of the Receiver’s motion for entry of an order approving the sale of Platinum’s 10-year right to extract and process the gold tailings from a tailings dam (the “*Tailings Dam*”) located in Mato Grosso, Brazil, (“*Abdala*” or the “*Investment*”) in which Platinum holds substantially all of the equity (the “*Motion*”).<sup>1</sup>

2. As set forth more fully herein, Houlihan Lokey advised and assisted the Receiver in the marketing and sale of the Investment, including assisting the Receiver in preparing the Investment for sale and designing and executing a marketing process which sought to maximize bids and obtain the highest value for the Investment. At the time of Houlihan Lokey’s engagement, Platinum had invested approximately \$16 million in Abdala.

#### **HOULIHAN LOKEY’S QUALIFICATIONS IN LATIN AMERICA AND MINING**

3. Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services.

4. Among other areas of expertise, Houlihan Lokey is a leading investment bank with a dedicated team – the Illiquid Financial Assets (“*IFA*”) practice – focused on complex asset transactions with extensive experience advising funds in wind-down. Houlihan Lokey is the one of the most experienced and recognized “liquidity advisors” across a broad spectrum of esoteric investments, including equity, credit, participations or other exotic securities. Houlihan Lokey’s global presence, including twenty-five (25) offices worldwide, facilitates strong situational understanding of geopolitical and economic factors influencing value and transaction

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<sup>1</sup> We understand that the Motion also seeks approval for the payment of certain legal fees, which this Declaration does not address.

dynamics. Houlihan Lokey has extensive experience in Latin America, including Brazil, having executed transactions involving assets across the region. Additionally, Houlihan Lokey's Industrials Group is one of the largest practices on Wall Street, and includes a dedicated metals and mining team. With respect to Brazil, Houlihan Lokey has advised on the restructuring of (i) Jaguar Mining Inc., a gold mining operator with mining complexes and a development project located in Brazil and (ii) Mirabela Nickel Limited, an operator of a mine and processing plant located in Brazil. Houlihan Lokey also has advised several gold mine operators, including Allied Nevada Gold Corp. and Ashanti Goldfields.

#### **THE FIRST ROUND OF THE MARKETING AND SALE PROCESS**

5. As directed by the Receiver, Houlihan Lokey launched a comprehensive marketing process on December 13, 2017, contacting two hundred and fifty-eight (258) prospective buyers to solicit interest in acquiring the Investment. Before contacting prospective buyers, Houlihan Lokey (i) assisted the Receiver in gathering information concerning the Investment and identifying and attempting to address any deficiencies in that information, and (ii) advising the Receiver on positioning the Investment for sale.

6. The list of prospective buyers was constructed based on Houlihan Lokey's knowledge of emerging market and mining market participants, and consisted of financial investors, such as special situations funds, alternative asset managers with mining expertise, family offices, sovereign wealth funds, private equity funds and natural resource focused funds, and strategic and local investors with operations in Brazil, as well as various investors who proactively contacted the Receiver to express interest in acquiring the Investment. Of the two hundred and fifty-eight (258) entities contacted, twenty-six (26) executed non-disclosure agreements and were provided with access to an online data room containing the information on

the Investment, including (i) a Confidential Information Memorandum (“*CIM*”), (ii) a Tailings Dam analysis and reports (the “*JDS Reports*”) completed by JDS Mining & Energy Inc. (“*JDS*”), (iii) a plan for processing the tailings completed by JDS (the “*JDS Processing Plan*”), (iv) a due diligence report completed by Behre Dolbear & Company (USA), Inc. on the Abdala gold mine operations prior to Platinum’s original loan (the “*Behre Dolbear Report*”), (v) relevant permitting documents, (vi) key legal documents and (vii) various other documents and analyses.

### **THE INITIAL INDICATIONS OF INTEREST**

7. Following the first round of the marketing process, eight (8) prospective purchasers submitted initial indications of interest. Our discussions with these bidders suggested that interest and pricing was impacted by a variety of factors that limited overall investor appetite and dampened pricing, including (i) resource risk, (ii) project risk, (iii) jurisdictional risk and (iv) legal risk, as discussed further below:

(i) **Resource Risk:** The resource validation testing completed by JDS did not comply with National Instrument 43-101 (a standard for reporting information related to mineral projects). While bidders indicated that the results of JDS’s testing were positively indicative, they nevertheless considered the results inconclusive. Additionally, the Behre Dolbear Report indicated that the Tailings Dam contained less gold than the JDS Report.

(ii) **Project Risk:** Because the project is in the pre-operational stage, there are risks surrounding the ability to (i) obtain the requisite permits to begin building the processing plant and extract the gold, and (ii) efficiently transport the tailings from the Tailings Dam to the leased processing site for processing and (iii) efficiently commercialize the gold into concentrate or doré bars, among other factors.

(iii) **Jurisdictional Risk:** Brazil is a complex jurisdiction that may require an operator with both legal and operating experience in Brazil to navigate the region's business practices and legal regime.

(iv) **Legal Risk:** Litigation related to the Tailings Dam is ongoing and could have an adverse effect on the Investment.

8. After weighing various potential courses of action, the Receiver decided to invite five (5) parties to the second round to complete detailed due diligence and submit a final binding bid.

### **THE SECOND ROUND OF MARKETING**

9. In the second round, each of the five bidders conducted a site visit to the Tailings Dam. Houlihan Lokey and JDS attended the site visits with each prospective bidder. Additionally, each bidder was granted significant access to (i) JDS, the third-party contracted by Platinum, in order to address bidders' diligence questions regarding the JDS Report and the JDS Processing Plan, (ii) Platinum's local Brazilian counsel, Chediak Advogados and Leite, Tosto e Barros Advogados, and (iii) Platinum's Portfolio Manager, Elliot Bertram, in order to address the bidders' due diligence questions on the Investment.

10. During the course of the second round, Platinum's sub-lease for the parcel of land on which it had planned to (and an acquiror would likely) develop a plant to process the gold tailings (the "***Leased Land***") was terminated due to litigation between the Leased Land's owner and its primary tenant. With the permitting process contingent on the applicant having rights to the Leased Land, bidders indicated that it was critical to obtain a new lease for the Leased Land prior to submitting final binding bids. After an extended period of negotiation, a new lease for the Leased Land was executed and a final bid date was established.



### THE FINAL BIDS

11. The second round of the marketing process yielded four (4) final bids. Following submission of the final bids, two of the bidders submitted a series of successive improved bids.

12. Based on a thorough analysis of the economic and non-economic factors of the final bids, as informed by JDS' operating assumptions and the experience of local advisors, including Chediak Advogados and Leite, Tosto e Barros Advogados, the Receiver determined that the Investment will be sold to CB Midas Holdings, LLC and CB Midas Brazil Participações Ltda. (each a Centerbridge Partners, L.P. affiliate, and hereafter individually and collectively referred to as "*Centerbridge*").

13. Centerbridge has agreed to acquire the Investment for purchase consideration consisting of three components: (i) \$27.5 million in cash at closing, plus (ii) an additional \$3.0 million, creditable against future royalty payments, conditioned on near-term resource testing of the Tailings Dam resulting in a head grade of at least nine (9) grams per ton, plus (iii) a royalty of 7.5% of cash revenues after Centerbridge achieves a 3.0x multiple of invested capital ("*MOIC*"). Houlihan Lokey understands that Centerbridge Partners, L.P. is an investment management firm with approximately \$28 billion in capital under management as of March 2018, focused on private equity and credit investment opportunities. In its bid, Centerbridge emphasized that its team—which has extensive experience investing in Brazil, illiquid assets and the metals and mining industry, and has extensive operational experience in the gold mining and processing sectors through its ownership of Boart Longyear—is well positioned to successfully manage the Investment and maximize its value.

**THE PSRA AND CLOSING**

14. We understand that, after arm's length negotiation between the Receiver, Centerbridge and their respective counsel, certain affiliates of Platinum and Centerbridge have entered into a Purchase, Sale and Royalty Agreement (the "**PSRA**"), which is described in detail in the Declaration of Melanie L. Cyganowski, as Receiver, dated July 24, 2018.

15. We understand that, as provided for in the PSRA, the closing of the transaction is to occur within two business days after all closing conditions have been satisfied, including this Court's approval.

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

Executed this 27th day of July, 2018, at New York, New York.

/s/ Paul Sanabria  
Paul Sanabria

5372541.

**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.	:
-----X	

No. 16-cv-6848 (BMC)

**MEMORANDUM IN SUPPORT OF MOTION OF  
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN  
ORDER APPROVING THE SALE OF THE RECEIVERSHIP’S RIGHTS IN  
AND TO A GOLD TAILINGS POND KNOWN AS “ABDALA” AND AUTHORIZING  
HER TO PAY THE FEES AND EXPENSES OF PLATINUM’S BRAZILIAN COUNSEL**

OTTERBOURG P.C.  
230 Park Avenue  
New York, NY 10169  
(212) 661-9100

*Attorneys for Melanie L. Cyganowski, as Receiver*

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Melanie L. Cyganowski, the duly appointed Receiver (the “**Receiver**”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“**PPCO**”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “**Receivership Entities**” or “**Platinum**”), through her counsel, Otterbourg P.C., respectfully submits this memorandum in support of her motion for entry of an order (the “**Motion**”) (a) approving the sale of the Receivership’s rights in and to a gold tailings pond in central Brazil known as “**Abdala**” and (b) authorizing her to pay the fees and expenses of Platinum’s Brazilian counsel, Chediak Advogados (“**Chediak**”), whose retention this Court approved by Order Authorizing the Receiver’s Application to Retain and Pay Limited Scope Legal Professionals entered December 26, 2017 [Dkt. No. 294] (the “**Retention Order**”), from the proceeds of the Abdala sale. In support of the Sale Motion, the Receiver states as follows:

**PRELIMINARY STATEMENT**

After eight months (not including pre-marketing preparation time), the rigorous efforts undertaken by Houlihan Lokey Capital, Inc. (“**Houlihan**”) to market and sell Abdala and by Brazilian counsel, Chediak, to resolve all local legal impediments, resulted in a robust competitive bidding process and in the Receivership achieving what the Receiver and her professionals believe is Abdala’s fair value. If approved, the sale would yield the Receivership \$27.5 million in cash at closing, plus additional and potentially highly valuable consideration based on resource validation results and future mining revenues. Specifically, in addition to the cash at closing, the Receivership will receive \$3 million in cash royalty advances approximately

six months after closing if gold content is validated to exceed a realistic threshold, as well a 7.5% royalty on cash revenues after the purchaser achieves a 3.0x multiple of invested capital. As further described herein, as well as in the contemporaneously filed supporting declarations by the Receiver and Houlihan, assuming a royalty advance but no back-end royalties, the proposed sale would result in a 1.8x return on Platinum's invested capital, a significant return on a Receivership asset.

As the Court is aware, Abdala has been a focal point of the Receivership since its inception. At the time the Securities and Exchange Commission ("**SEC**") commenced this action in December 2016, Platinum's pre-Receivership management had valued Abdala on Platinum's books at over \$120 million and had been promoting the investment in investor calls and/or newsletters as having potential investment upside well in excess of that figure. During a meeting the Receiver had with Platinum's former Chief Investment Officer, Mark Nordlicht, and his counsel earlier this year, he implored the Receiver to invest Receivership funds into developing a processing plant to process the gold tailings and speculated that, with the investment of such additional capital, the Receivership eventually could realize up to \$300 million or more from Abdala.

Relying, in part, on prior management's valuations and assumptions and, in part, on his and his professionals' own valuations and due diligence, including a visit by representatives of the prior receiver to Brazil, the prior receiver, Bart M. Schwartz (the "**Prior Receiver**"), expressed similarly bullish views regarding Abdala. In a letter to the Court dated June 23, 2017, the Prior Receiver approvingly cited a valuation valuing "the Project at a range of \$55 million to \$114 million, assuming that PPCO invested \$5 million into the Project," while simultaneously sharing the assessment that "PPCO would be unable to recover its cost basis (approximately \$10

million) if the Receiver tried to sell it today.” (Letter to Chief Judge Dora L. Irizarry from Bart M. Schwartz, dated June 23, 2017 [Dkt. No. 180])

The bullish views of both prior management and the Prior Receiver have resulted in a hyping of the asset among Platinum investors, certain of whom have declared “Abdala . . . to be PPCO's most valuable asset, worth between \$50 and \$550 million, depending upon the amount of recoverable gold in the tailings pond” and who, consequently, opposed the Receivership’s retention of Houlihan to market and sell the Abdala asset, urging the Court instead to afford the investors the opportunity to argue in favor of “alternatives to the liquidation of Abdala.” (Letter to Honorable Brian M. Cogan from William C. Nystrom, dated October 23, 2017 [Dkt. No. 277])

In view of the intense spotlight on the Abdala asset as a result of prior management’s and the Prior Receiver’s lofty valuations and the resulting elevated expectations of Platinum’s investors, no Platinum asset has garnered more of the Receiver and her professionals’ attention than Abdala. Knowing the level of scrutiny that any disposition of Abdala would generate, it was vital to the Receiver that any issues that might prevent or chill prospective interest in the asset be promptly identified and redressed, that the asset be aggressively and exhaustively marketed to a targeted roster of qualified purchasers, and that Houlihan and the Receivership team devote as much time and resources as necessary to achieve the fair value of the asset.

Without question, the Receiver and her team focused keenly on achieving fair value for the disposition of Abdala. They share the view that Abdala is the Receivership’s most valuable asset although, as described below and in the accompanying: (i) Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion to Approve Sale of Abdala and to Pay Brazilian Counsel from the Sale Proceeds (the “*Cyganowski Dec.*”); and (ii) Declaration of Houlihan Lokey Capital, Inc. (the “*Houlihan Dec.*”), it is not as valuable as some have believed. For these reasons, and the reasons set forth below and in the contemporaneously filed Cyganowski Dec.



and Houlihan Dec., the Receiver respectfully requests that this Court grant the Motion.

### **BACKGROUND ON THE ABDALA INVESTMENT**

The summary set forth below is based on information contained in Platinum's books and records and/or provided by the Platinum legacy portfolio manager who managed the Abdala investment, Elliot Bertram ("**Betram**"), whom the Receivership has continued to employ in recognition of Abdala's significance to the Receivership, as well as the Receivership's retained professionals, including Houlihan. Cyganowski Dec. ¶ 8.

Abdala refers to the Receivership's contract rights to extract gold for a period of ten years from a tailings pond located near Cuiababa, Brazil. The tailings pond is an impoundment approximately 300 meters wide by 300 meters long and 20 meters deep containing dried slurry (*i.e.*, sand and gravel) from the adjacent Abdala gold mining operation. The Abdala gold mine involved a relatively unsophisticated operation. The mine consists of two open pits, which feed a processing facility that utilizes hammer mills and basic Brazilian-made gravity concentrators to extract gold. Cyganowski Dec. ¶ 9.

Platinum's investment in Abdala resulted from loans totaling, according to Platinum's books, \$12.3 million that it extended to Resource Holdings, Inc. ("**RHI**"), a development-stage company that leased equipment and provided working capital to Brazilian gold mines. With the funds advanced from Platinum, RHI, in turn, financed the owner of the Abdala gold mine, Reginaldo Luiz De Almeida Ferreira ("**Rico**"), whose loans from RHI subsequently were assigned to Platinum. The loans to RHI and Rico went into default, and, following a settlement with RHI, Platinum began foreclosure proceedings against Rico. In or about November 2015, following years of contentious litigation and negotiations, Platinum and Rico reached an agreement whereby Platinum received ten years of mining rights in and to the Abdala tailings

pond in settlement of the loan obligations. The settlement was recorded with the Brazilian court in January 2016. Cyganowski Dec. ¶ 10.

In light of the contentious dealings between Platinum and Rico, Platinum determined to locate the processing plant it would need to develop in order to process the gold tailings on a nearby piece of property, which it subleased from a sub-lessor called Acqua Investments (“*Acqua*”). Cyganowski Dec. ¶ 11.

In or about mid-2015, Platinum engaged JDS Energy & Mining, Inc. (“*JDS*”), a known expert in the mining field, to oversee sampling, assaying, resource estimation and gold recovery test work on the tailings pond. JDS provided a written report of its conclusions to Platinum in January 2016. Based on 169 samples, JDS estimated an average grade (head grade) of 24 grams of gold per ton of slurry (24 g/t). However, JDS noted significant variability across the samples tested, stating that “given the nature of the samples and the high variability observed for assays of duplicated samples, caution must be used when estimating head grade and production performance of the processing facility.” JDS also provided a permitting and construction timeline, a capital expenditure (CAPEX) budget for developing a processing plant, and financial projections reflecting net operating income for the duration of the project. JDS forecasted that, based on a plant license submission to local authorities by mid-July 2017, the plant could be in production within a year and a half to two years at a cost of \$6.1 million to operation, and an additional \$2.5 million in CAPEX during the first year of operation. However, as a result of Platinum’s liquidity issues and the Receivership, steps to develop the processing plant were not undertaken. Cyganowski Dec. ¶ 12.

The appropriateness and ability of the Receivership to invest millions of dollars of capital in a gold recovery processing operation was one of the central disputes that divided the Prior

Receiver and the SEC and which culminated in his resignation. (*See* Dkt. Nos. 142, 170, 179, 180) Following her appointment as Receiver and her comprehensive review, with her professionals, of all of the Receivership's assets and liabilities, the Receiver concurred with the SEC that Abdala, like Platinum's other marketable assets, should be monetized in an orderly fashion. With Court approval, the Receiver retained Houlihan, a highly-regarded and experienced, investment banking firm to orchestrate the marketing and sale of Abdala. In granting the Receiver's application to retain Houlihan, over the objection of certain investors who requested that Abdala be excluded from the scope of Houlihan's services, the Court observed:

The Receiver is not tasked with making speculative investments. Instead, she is entrusted with the responsibility to prudently wind-down the Receiver Entities and dispose of the Receivership Assets in a manner that safely returns to stakeholders what value can be salvaged. She is not empowered to jeopardize that return by indulging in risky investment opportunities with the very money she has been charged to return to the victims of alleged years' long fraudulent conspiracies. It is clear to the Court that these investors are frustrated by their inability to realize the investment returns they were promised, but that frustration does not justify the Receiver using the limited remains of alleged conspiracies to look for South American gold. (Dkt. No. 285)

The Receiver agrees with, and has been guided by, the Court's observations.

Cyganowski Dec. ¶¶ 13, 14.

## **THE MARKETING AND SALE OF ABDALA**

### **A. Houlihan's Background and Experience**

As mentioned, with authority granted by this Court, the Receiver previously retained Houlihan to assist her with the marketing and sale of, among other assets, Abdala. Pursuant to that retention (Dkt. Nos. 275, 285), and based upon the parameters of the sale contemplated herein, Houlihan Lokey will be entitled to a fee of \$1,375,000 upon closing of the sale.

Cyganowski Dec. ¶ 15.

Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services. Houlihan Dec. ¶ 3.

Among areas of expertise, Houlihan is an experienced and recognized “liquidity advisor,” with experience across a broad spectrum of esoteric investments, including equity, credit, participations or other exotic securities. *Id.* ¶ 4. Houlihan also has extensive experience in Latin America, including Brazil, having executed transactions involving assets across the region, and has a dedicated metals and mining team. *Id.* Houlihan’s relevant experience in Brazil includes having previously advised on the restructuring of (i) Jaguar Mining Inc., a gold mining operator with mining complexes and a development project located in Brazil; and (ii) Mirabela Nickel Limited, an operator of a mine and processing plant located in Brazil. *Id.*

#### **B. The First Round of Marketing Activity**

After extensive preparation, Houlihan launched a comprehensive marketing process on December 13, 2017, contacting a list of 258 prospective purchasers, including special situations funds, alternative asset managers with mining expertise, family offices, sovereign wealth funds, private equity funds and natural resource focused funds, as well as strategic and local investors with operations in Brazil, constructed from Houlihan’s knowledge of emerging market and mining market participants and solicitations by investors who proactively contacted the Receiver to express interest in acquiring Abdala. *Id.* ¶ 6. Of the list of 258 prospective purchasers contacted by Houlihan, 26 executed non-disclosure agreements and were provided with access to an online data room that included, among other things, the analysis and reports completed by JDS (the “*JDS Reports*”). *Id.*

Following this first round of marketing activity, eight prospective purchasers submitted initial indications of interest. Houlihan’s discussions with prospective purchasers identified a

number of factors that limited the interest in the Abdala asset, including questions about the reliability of the JDS Reports' head grade conclusions, as well as operational, legal and local risks. *Id.*

One of the steps the Receiver considered in mitigating at least the questions surrounding the reliability of JDS's findings was to commission additional resource validation of the tailings (*i.e.*, sampling, assays and tests of the tailings in accordance with National Instrument 43-101, an industry standard for resource validation). After consultation with Houlihan and the Receivership's professionals, the Receiver ultimately decided against it. Resource validation, done to the NI 43-101 standard, is an expensive and time consuming process that would have potentially added six months to an already lengthy marketing and sale process, and cost the Receivership up to \$1 million in direct out-of-pocket expenses, in addition to tens, if not hundreds, of thousands of dollars in additional monthly charges (at a rate of approximately \$30,000/month) for security and other recurring expenses due to the Receivership's extended horizon for owning the asset. Furthermore, the Receiver concluded that the downside risk - that additional testing would result in a lower head grade than that found by JDS - was equal to, if not greater than, the upside potential that additional testing would confirm JDS's head grade estimates. Cyganowski Dec. ¶ 20.

### **C. The Second Round of Marketing Activity**

After determining not to commission resource validation, and in consultation with Houlihan, the Receiver invited five bidders to complete their due diligence and submit final bids. Cyganowski Dec. ¶ 21. This second round of marketing activity included each of the five bidders conducting a site visit to the tailings pond, accompanied by each of Houlihan, JDS and Bertram. *Id.* In addition to the site visit, each bidder was granted significant access to JDS,

Platinum's local Brazilian counsel, Chediak and Leite, Tosto e Barros Advogados ("**Leite, Tosto**"), and Platinum's portfolio manager, Bertram. Cyganowski Dec. ¶ 21, Houlihan Dec., ¶ 9.

During the course of the second round, Platinum's sub-lease for the parcel of land on which Platinum contemplated building, and any purchaser would be expected to build, a processing plant, (the "**Leased Land**"), was terminated due to litigation between the Leased Land's owner and its primary tenant. With the permitting process contingent on the applicant having rights to the Leased Land, bidders indicated that it was critical to obtain a new lease for the Leased Land prior to submitting final binding bids. After an extended period of negotiation, a new lease directly for the Leased Land was executed and a final bid date was established. Cyganowski Dec. ¶ 22, Houlihan Dec., ¶ 10.

Houlihan received final bid from four bidders. After the initial deadline, two of the bidders continued to significantly improve their bids. The result was a competitive bidding process involving sophisticated market participants that provided the Receiver with a high level of confidence that a fair value would be achieved. Cyganowski Dec. ¶ 23, Houlihan Dec., ¶ 11.

#### **D. The Winning Bid**

Based on a thorough analysis of the economic and non-economic factors of the final bids and in consultation with Houlihan and the Receivership's professionals, all as informed by JDS' operating assumptions and the experience of local advisors, including Chediak and Leite, Tosto, the Receiver entered into a purchase agreement, subject to Court approval, to sell Abdala to CB Midas Holdings, LLC and CB Midas Brazil Participações Ltda. (each a Centerbridge Partners, L.P. affiliate, and hereafter individually and collectively referred to as "**Centerbridge**"). Centerbridge Partners, L.P. is a multi-strategy private investment firm with approximately \$28 billion in capital under management as of March 2018, and which has extensive experience both in Brazil and in mining ventures. Cyganowski Dec. ¶ 24.

Centerbridge’s winning bid consists of the following three components: (i) \$27,500,000 in cash at closing, plus (ii) an additional \$3,000,000, creditable against future royalty payments, contingent on the results of required additional resource testing of the tailings pond yielding a head grade of at least 9 g/t (the “*Conditional Payment*”), plus (iii) a royalty of 7.5% of cash revenues after Centerbridge achieves a 3.0x multiple of invested capital (“*MOIC*”). The structure of the deal was designed to generate a substantial upfront cash payment to the Receivership, while, at the same time, permitting the Receivership to significantly enhance its return in the event that the tailings pond has significant recoverable gold, as JDS has estimated. Cyganowski Dec. ¶ 25.

In its bid, Centerbridge emphasized that its team—which has extensive experience investing in Brazil, illiquid assets and the metals and mining industry, and has extensive operational experience in the gold mining and processing sectors through its ownership of Boart Longyear—is well positioned to successfully manage the Investment and maximize its value. Houlihan Dec., ¶ 13.

Centerbridge’s bid, if approved by the Court, would result in the Receivership receiving a significant return on Platinum’s invested capital in Abdala. According to Platinum’s books and records, the total amount of capital that Platinum invested in Abdala, both before and during the receivership, is approximately \$16 million, consisting of approximately \$12 million in loans to RHI and an additional approximately \$4 million in legal and other costs invested to protect and preserve the asset. Disregarding all potential royalty payments, but assuming that the Conditional Payment is received, the proposed sale to Centerbridge results in a 1.8x return on invested capital to investors (*i.e.*, \$30,500,000 in gross sale proceeds, less Houlihan Lokey’s transaction fee divided by \$16,000,000 in invested capital). A 1.8x return on invested capital is among the best returns achieved over the entire Receivership portfolio. Cyganowski Dec. ¶ 26.

In addition, the Receiver has not been convinced by the book values that prior management placed on Abdala. The timing and amount of the elevated valuations coincides with the liquidity issues that Platinum was experiencing and the allegedly fraudulent conduct of which its management has been accused. According to Platinum's books and records, prior management valued Abdala on its books in the range of \$12 to \$15 million until the fourth quarter of 2015, when the book value then skyrocketed to \$50 million. The book value increased to \$51.6 million during the first quarter of 2016. It then nearly doubled to \$100 million in the second quarter of 2016 and further to over \$122 million in the third quarter of 2016. Cyganowski Dec. ¶ 27.

#### **THE PSRA AND CLOSING**

The Purchase, Sale and Royalty Agreement (the "**PSRA**") among Platinum Partners Opportunities Master Fund LP ("**PPCO**"), West Ventures LLC (an entity wholly owned by PPCO and with PPCO, hereafter individually and collectively referred to as Platinum) and CB Midas Holdings, LLC and CB Midas Brazil Participações Ltda. is dated as of July 24, 2018, and provides for a closing of the transaction two business days after all closing conditions have been satisfied, including approval of the transaction by this Court. Cyganowski Dec. ¶ 28.

Under the PSRA, Platinum has agreed to sell, and Centerbridge has agreed to purchase, all of Platinum's right, title and interest in and to Abdala in return for aggregate consideration consisting of (a) closing purchase consideration of \$27,500,000, (b) a royalty advance of \$3 million in the event that resource validation (an independent resource validation and report carried out with respect to the tailings pond in accordance with National Instrument 43-101 standards within six months of the Closing) indicates an average grade of commercially recoverable gold equal to or greater than nine (9) grams per ton, and (c) royalty consideration of



7.5% of cash revenue resulting from mining and/or milling activities upon the property after Centerbridge has achieved a 3.0x multiple of invested capital. Cyganowski Dec. ¶ 29.

The PSRA provides that the sale is on an “as is” “where is” basis, with only limited representations and warranties, and no representations or warranties concerning the condition of the tailings pond or the quantity of its gold content. Cyganowski Dec. ¶ 30.

The PSRA may be terminated by Platinum in the event of Platinum’s acceptance of a Superior Offer, but, in such event, Platinum is required to pay to Centerbridge a Superior Offer Termination Fee (or break-up fee) equal to 10% of the gross value of cash, securities and other assets paid by an acquirer for Abdala. Cyganowski Dec. ¶ 31.

#### **COMPENSATION TO CHEDIK**

The Court approved the Receivership’s retention of Chediak in the Retention Order. Cyganowski Dec. ¶ 32.

Pursuant to the Retention Order, the Receiver was authorized to pay Chediak “up to \$13,727.50 in fees and \$1,431.75 in expenses in connection with services rendered during the First Application Period, and authorized, but not required to pay Chediak up to \$50,000 for any additional reasonable fees and expenses incurred after May 31, 2017, without further order of this Court. Cyganowski Dec. ¶ 33 citing Dkt. No. 294.

The services of Chediak were integral and vital to the marketing and sale of Abdala. Chediak interfaced with the bidders and counsel for the bidders, who had ongoing questions and concerns regarding applicable laws and regulations governing the operation of the tailings pond. After Acqua terminated the sub-lease on which Platinum’s, and any successor purchaser’s, plant would be located for processing the gold tailings, Chediak negotiated the terms of a new lease for the site. It also continued to oversee pending litigation involving the Abdala project in Brazil. Cyganowski Dec. ¶ 34.

Following the Court's approval of Chediak's retention, and in accordance with the provisions in the Retention Order, the Receivership has paid Chediak a total of \$44,381.14 for services rendered through the end of February 2018, leaving the Receiver with authority under the Retention Order to pay Chediak an additional \$5,618.86 without further order of the Court. Chediak's invoices from March 2018 to date, which have been reviewed and determined to be appropriate, total \$66,992.33. Court approval authorizing me to pay Chediak from the proceeds of the Abdala sale (if approved) \$61,373.47 for current outstanding legal fees and expenses, as well as up to an additional \$25,000 for legal fees and expenses associated with closing and post-closing representation is therefore requested. Cyganowski Dec. ¶ 6.

#### **DISCLOSURE OF OTHER CLOSING COSTS**

In addition to payment to Chediak, certain other significant fees and expenses will be paid from the proceeds of the sale (if approved). Pursuant to the terms of Houlihan's approved retention (Dkt. Nos. 275, 285), and based upon the parameters of the contemplated sale, Houlihan will be entitled to a fee equal to 5% of cash consideration or \$1,375,000 upon the closing of the sale. Cyganowski Dec. ¶ 36.

In addition, as the Court previously approved and authorized [Dkt. No. 301], Leite, Tosto will be paid a lump sum payment of \$125,000 from the sale proceeds. Cyganowski Dec. ¶ 37.

Furthermore, JDS, a mining consultant that Platinum had engaged prior to the Receivership and which has continued to perform work on the asset as an ordinary course expense, will apply at closing \$318,090 in outstanding fees and expenses to the remaining \$556,450 that was paid to it by Platinum as a retainer prior to the commencement of this action and remit to the Receivership the balance. Cyganowski Dec. ¶ 38.

The foregoing is not intended to reflect every expense related to Abdala that the Receivership will pay at or after the closing, but reflects the significant Abdala-related expenses

that will be paid. Cyganowski Dec. ¶ 39.

### **APPLICABLE AUTHORITY**

Entry into the PSRA and closing on the sale of the Abdala asset provided for therein is well within the scope of the authority vested in the Receiver by the Receivership Order. See Second Amended Order Appointing Receiver, October 16, 2017, Dkt. No. 276 at ¶¶ 3, 6, 27, and 30 – 32. It is also well within this Court’s inherent equitable power to approve the Sale Motion. See S.E.C. v. Credit Bancorp Ltd., 290 F.3d 80, 82-83 (2d Cir. 2002) (a receivership court has broad equitable authority to issue orders necessary for the proper administration of the estate and all of the assets and property thereof). This is especially true where, as here, the sale represents the Receiver’s exercise of her sound business discretion and judgment as a course of action that is in the best interests of the Receivership Estate. The Receiver is entitled to great deference in this regard. See In re JFD Enter., Inc., 2000 WL 560189, \*5 (1st Cir. 2000) (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”) (internal citations omitted). Here, the Receiver’s business judgment is that the transaction contemplated by the PSRA represents the best recovery on the Abdala asset for the Receivership Estate.

**CONCLUSION**

For the reasons set forth herein, the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec.: (a) approving the sale of the Receivership's rights in and to the Abdala gold tailings pond in central Brazil; (b) authorizing her to pay the fees and expenses of Platinum's Brazilian counsel, Chediak Advogados, from the proceeds of the Abdala sale; and (c) granting the Receiver such other and further relief as the Court deems appropriate.

Dated: New York, New York  
July 27, 2018

OTTERBOURG P.C.

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