

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

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SECURITIES AND EXCHANGE COMMISSION,	)	Civil Action No. 16-cv-6848 (BMC)
	)	
<i>Plaintiff</i>	)	
	)	
-v-	)	
	)	
PLATINUM MANAGEMENT (NY) LLC,	)	
PLATINUM CREDIT MANAGEMENT, L.P., ET	)	
AL.,	)	
	)	
<i>Defendants</i>	)	
	)	
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	x	

**CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

This Confidentiality Agreement (this “Agreement”) is executed as of October 8, 2018 by and among (a) Melanie L. Cyganowski, solely in her capacity pursuant to the October 16, 2017 Second Amended Order Appointing Receiver entered by this Court (the “Court”) in this action (Dkt. No. 276) and the Order Approving Expansion of Receivership entered by the Court on December 29, 2017 (Dkt. No. 297) (as thereafter amended, modified or supplemented, collectively, the “Receivership Order”), as the 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, 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”); (b) AGH Parent LLC and AGX Holdings, LLC (together with the Receiver and the Receivership Entities, collectively the “Parties” and each a “Party”); and (c) others who execute and deliver to each Party the Addendum in the form attached hereto as Exhibit A (the “Additional Signatories”) in connection with the above-captioned matter.

1. In connection with the above-captioned matter, a Party may disclose certain confidential documents and other information (a “Producing Party”) to another Party (together with such Party’s director, officers, members employees, independent contractors that are subject to a confidentiality obligation with such Party and/or such Party’s Representatives (as defined below), the “Receiving Party”).

2. Each Party agrees to treat any information, whether written or oral, furnished by another Party that is labeled or identified by such other Party as “Confidential,” together with any and all analyses or other documents prepared by such Producing Party or any of its advisors, attorneys, accountants, consultants, expert witnesses, or representatives (collectively, “Representatives”) that disclose such information, in accordance with this Agreement.

3. The term “Confidential Material” refers to material that is designated by a Party or its counsel in good faith as “Confidential” and consists of documents and testimony and all information contained therein containing sensitive non-public, business or private information, including information that would reveal that Party’s trade secrets, competitive position or plans, strategies, or proprietary methods, the disclosure of which information is highly likely to cause harm to an individual or to the business or to the competitive position of the Producing Party. Confidential Material does not include information that (a) was already in the Receiving Party’s possession prior to the time of disclosure to such Party in the above-captioned matter by the Producing Party or its Representatives (provided, however, that the Party in receipt of such information shall remain bound by any existing confidentiality obligations), (b) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives, (c) becomes available to the Receiving Party on a non-confidential basis from a source other than the Producing Party or its Representatives, provided that such source is not known by the Receiving Party to be bound by a confidentiality agreement with the Producing Party, or otherwise prohibited from disclosing the information to the Receiving Party, or (d) was or is independently developed or independently received by the Receiving Party or its Representatives without violating its obligations hereunder.

4. Except as set forth herein or in any subsequent agreement of the Parties or order of the Court, Confidential Material and any part of the information contained therein shall not be delivered, exhibited, or disclosed, directly or indirectly, to persons other than:

- (a) the Court or other courts or arbitration tribunals in which a Party is a party to a litigation or arbitration (collectively, the “Proceedings” and each individually a “Proceeding”), or any persons employed or appointed by any of them, provided that any Confidential Material that is used or disclosed in any other Proceeding must be subject to the same or similar confidential treatment as is provided for in this Agreement;
- (b) court reporters, videographers, or other qualified persons taking testimony;
- (c) current officers, directors, members, and employees of each of the Parties, including their parents, subsidiaries and affiliates;
- (d) undersigned counsel for a Party in the above-captioned matter or in any other Proceeding, and any attorney, paralegal, clerical and secretarial staff employed by such counsel or such counsel’s law firm;
- (e) independent copying, e-discovery, and computer services firms and their employees, retained to copy, process, or host any Confidential Material;

(f) independent experts and consultants (testifying and nontestifying) retained by undersigned counsel to assist in the preparation of hearing(s) in connection with the above-captioned matter or any other Proceeding, or to testify at those hearing(s) or any other Proceeding, provided that they agree in writing, by executing the Addendum attached hereto as Exhibit A, to be bound by the terms of this Agreement;

(g) actual Party or non-party fact witnesses, provided there is a reasonable basis to believe that the fact witness will give relevant testimony regarding the designated Confidential Material;

(h) witnesses at or in preparation for the above-captioned matter or any other Proceeding, provided there is a reasonable basis to believe the witness will give relevant testimony regarding the designated Confidential Material;

(i) persons identified on the face of the Confidential Material as having authored or previously received the Confidential Material;

(j) other professionals or persons retained or employed by the Receiver or the Receivership estate in accordance with the Receivership Order, provided such professionals execute the Addendum attached hereto as Exhibit A; and

(k) such other persons as the Parties may agree upon in writing.

5. In the case of depositions, if counsel for a Party believes that a portion or all of the testimony given at a deposition constitutes Confidential Material of such Party, counsel shall so state on the record and shall request that the entire transcript or the relevant portion of the testimony be designated as such. The court reporter shall be instructed to include on the cover page of each so-designated transcript the legend: "This transcript portion contains information subject to a Confidentiality Agreement and shall be used only in accordance therewith." In addition, each page of the transcript containing information so designated shall include the legend "Confidential" as appropriate. If the deposition is videotaped, the videotape shall be subject to the same level of confidentiality as the transcript, and the cover of the videotape shall include the legend "Confidential" as appropriate, if any portion of the transcript itself is so designated. In addition, any Party may designate the transcript or videotape of a deposition as "Confidential" within seven (7) court days of the Party's receipt of the final transcript from the court reporter. Such designation and notice shall be made in writing to the court reporter, with copies to all other counsel, identifying the portion(s) of the transcript that constitute items designated as "Confidential." Nothing in this paragraph shall apply to or affect the confidentiality designations on documents or materials entered as exhibits at depositions.

6. Each Party reserves the right to challenge the other Party's designation of documents as "Confidential."

(a) If any dispute regarding the designation of any document as “Confidential” is not resolved through a meet-and-confer process, the challenging Party may seek appropriate relief from the Court.

(b) Any disputed Confidential Material shall be treated in accordance with its designation under this Agreement until the Court rules otherwise.

(c) Once an application for appropriate relief is made, the burden rests on the Party seeking confidentiality to demonstrate such designation is proper.

7. Subject to Paragraph 8 below, the Confidential Material will be used solely in the context of the above-captioned matter as provided for in this Agreement, and will be kept confidential by the Parties and will not be filed or referenced in a filing with the Court or in any other Proceeding, except to the extent that disclosure: (a) has been consented to in writing by the Producing Party; (b) is made to this Court or the court or arbitration tribunal in another Proceeding and is filed under seal or in a sealed or confidential proceeding; or (c) has been specifically authorized by the Court. In the event that a Party has been requested, by document request, subpoena or otherwise, to produce AGH Parent LLC and/or AGX Holdings, LLC’s Confidential Material in the above-captioned matter or any other Proceeding, the Party must provide AGH Parent LLC and/or AGX Holdings, LLC with reasonable written notice prior to any such disclosure in order to afford AGH Parent LLC and/or AGX Holdings, LLC the opportunity to timely object prior to any such production. The written notice must (i) identify the name(s) of the party(ies) who have requested the Confidential Material, (ii) identify the Proceeding in which the Confidential Material has been requested, and (iii) attach a copy of the subpoena or request requesting the Confidential Material. The Party will not produce any of AGH Parent LLC and/or AGX Holdings, LLC’s Confidential Material while a motion for protective order brought by AGH Parent LLC and/or AGX Holdings, LLC pursuant to this paragraph is pending, or while an appeal from or request for appellate review of such motion is pending, unless the Court or the court or tribunal in another proceeding to which AGH Parent LLC and/or AGX Holdings, LLC has directed a motion for a protective order orders production of the material that is subject of this Agreement.

8. Other Proceedings. Any person or Party subject to this Agreement who becomes subject to a motion to disclose another Party’s information designated as “Confidential” pursuant to this Agreement shall promptly provide written notice to that Party of the motion so that the Party may have an opportunity to appear and be heard on whether that information should be disclosed.

9. The inadvertent disclosure of any privileged information shall not be deemed to constitute a waiver of any privilege or protection that would otherwise apply. Within five (5) days after the discovery of any inadvertent production, the Producing Party shall provide written notice to the Receiving Party that privileged documents or information have been inadvertently produced or disclosed and request the return or destruction of such documents or information. Any document, including all copies thereof, constituting or containing information as to which notice of inadvertent production is given shall be returned or destroyed within five (5) days of such demand. Within five (5) days of providing written notice of the inadvertent production, the

Producing Party shall provide the Receiving Party a privilege log for the document(s) inadvertently produced.

10. Except as provided in this paragraph, following a Party's production or dissemination of Confidential Material, the failure to designate particular Confidential Material as "Confidential" at the time of production shall not operate to waive a Party's right to later designate such Confidential Material as "Confidential." If an omitted "Confidential" designation is first claimed during the course of a deposition or hearing, the subject Confidential Material may be used during that day's deposition or hearing as though no designation had been made but shall be treated as though such designation had been made immediately thereafter. Further, in the event that (i) a Producing Party produces or disseminates Confidential Material that was not designated as "Confidential" at the time of production, and (ii) such Producing Party later designates such Confidential Material as "Confidential" then any Receiving Party that disclosed such Confidential Material to persons other than those enumerated in Paragraph 4 cannot be held liable under this Agreement if such disclosure occurred prior to the time the Producing Party notifies the Receiving Parties of its intent to designate such Confidential Material as "Confidential."

11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. The Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the Court for any dispute, suit, action, or other proceeding arising out of this Agreement.

12. This Agreement binds the Parties only with respect to the matters expressly set forth herein. This Agreement constitutes the entire Agreement between the Parties regarding the subject matter hereof. No amendments, changes or modifications may be made to this Agreement without the express written consent of the Parties and approved by the Court. No failure or delay by a Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder.

13. Within sixty (60) days of the later of the conclusion of the above-captioned matter and the conclusion of any other Proceeding in which any Confidential Material is being used by the Receiving Party in accordance with the terms of this Agreement, including all post-trial motions, motions for stay, mandamus, and appeals as to all Parties, upon request by a Producing Party, the Confidential Material and all copies thereof (or of portions thereof) in the possession of the Receiving Party, and all notes or other materials derived thereof, will be promptly (and in any case within fourteen (14) days of the Producing Party's request) returned to the Producing Party or destroyed by the Receiving Party and the Receiving Party shall confirm in writing to the Producing Party that all such material has been returned or destroyed in compliance with this Agreement; provided, however, the law firm for the Receiving Party shall be entitled to retain one copy of such material to the extent the Receiving Party reasonably believes that its retention is required by law or the rules or procedures of any government agency or regulatory or standards body having, or claiming to have, jurisdiction over the Receiving Party and shall not be required to destroy such materials held on electronic back-up or archived files. For the avoidance of doubt, this paragraph shall not require any Party or its Representatives to destroy or

return any material that was in the possession of the Party or its Representatives prior to the time of disclosure in the above-captioned matter to such Party by the Producing Party or its Representatives.

14. The undersigned counsel represent that they have the authorization to execute this Agreement on behalf of their respective clients.

15. This Agreement may be executed in counterparts, any of which may be transmitted by facsimile, and each of which should be deemed an original and all of which together shall constitute one and the same instrument.

16. The Parties have cooperated in the drafting and preparation of this Agreement. Therefore, in any construction to be made of this Agreement, the Agreement shall not be construed for or against any Party on that basis.

Accepted and agreed to as of the date first written above:

Dated: October 8, 2018  
New York, New York

OTTERBOURG, P.C.

By:   
Adam C. Silverstein, Esq.

230 Park Avenue  
New York, New York 10169  
Telephone: (212) 905-3628  
*Counsel for Melanie L. Cyganowski, as Receiver*

CONDON TOBIN SLADEK THORNTON PLLC

By:   
Michael J. Merrick, Esq.

8080 Park Lane, Suite 700  
Dallas, Texas 75231  
Telephone: (214) 265-3800  
*Counsel for AGH Parent LLC and AGX Holdings, LLC*

SO ORDERED: 10/19/18

/s/(BMC)

Hon. Brian M. Cogan, U.S.D.J.

**Exhibit A**

**ADDENDUM TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

I \_\_\_\_\_, declare under penalty of perjury, the following:

I reside at \_\_\_\_\_ in the City/County of \_\_\_\_\_  
and State of \_\_\_\_\_;

I have read the annexed Confidentiality Agreement and Protective Order (the  
“Agreement”), dated \_\_\_\_\_, 2018;

I am fully familiar with and agree to comply with and be bound by the provisions of the Agreement and consent to the jurisdiction of the United States District Court for the Eastern District of New York, and I will not divulge to any persons or entities other than those specifically authorized by the Agreement and will not copy or use, except solely for purposes permitted under the Agreement, any Confidential Material (as such term is defined in the Agreement), or information derived therefrom.

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

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_