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October 19, 2018

VIA ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.,*
 No. 1:16-cv-6848-BMC**

Dear Judge Cogan:

We represent defendant Daniel Small in the above-captioned matter and write to join in the motions of his co-defendants to compel the SEC Receiver to advance payment for Mr. Small's reasonable attorneys' fees and defense costs to be incurred in the matter of *United States v. Nordlicht, et al.*, No. 16-cr-00640 (BMC) (the "Criminal Matter"). (See ECF Nos. 392, 403.) The arguments generally raised in those motions apply equally to Mr. Small.

Among the arguments raised in those motions that Mr. Small joins, we write to specifically direct to the Court the unequivocal language in the Operating Agreement for Credit Funding LLC (the "Credit Funding Agreement") that requires the Company to provide mandatory indemnification and advancement to Mr. Small. (See Mr. Levy's Motion, ECF No. 403, at 3-5 (discussing and attaching the Credit Funding Agreement).) Like Mr. Levy, Mr. Small was also a Member and Portfolio Manager of Credit Funding LLC and is a signatory to the Credit Funding Agreement. As Mr. Levy's motion establishes, the Credit Funding Agreement requires Platinum Partners Credit Opportunities Fund LP ("PPCO Master Fund"), as Managing Member of Credit Funding LLC, to cover the advancement of Mr. Small's defense costs, which is mandatory. (See ECF No. 404-1, Credit Funding Agreement, at § 11.2 ("[T]he Managing Member . . . shall make such capital contributions to the Company as are necessary to cause the Company to comply with its indemnification obligations hereunder, or otherwise pay any such amount from its own assets. . . . Upon making a claim for indemnification, the Member, the Managing Member, or the Portfolio Manager, as applicable, may request in writing that the Company advance to such indemnified person the expenses of defending the claim, action, suit or proceeding giving rise to such indemnification claim and the Company shall advance such expenses.").) Because the PPCO Master Fund is one of the Receivership

Entities, the Receiver is required to advance Mr. Small's defense fees for the PPCO Master Fund. While Mr. Small is currently still receiving coverage from insurance proceeds, he expects those sums to be insufficient to cover the fees and defense costs that will be associated with the upcoming trial.

Therefore, for the foregoing reasons and those set forth in Mr. Small's co-defendants' motions, we respectfully request that the Court direct the SEC Receiver to advance Mr. Small's attorneys' fees and legal defense costs.

We thank the Court for its consideration.

Respectfully submitted,

/s/ Seth L. Levine

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cc: All Counsel of Record (via ECF)