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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 this letter to join in the reply submitted by co-defendant David Levy in further support of defendants' motions to compel advancement (*see* ECF No. 412) as generally the arguments raised in the reply apply equally to Mr. Small.

In addition to the arguments raised by the other defendants, Mr. Small notes that the Receiver in her opposition to Defendants' motions (ECF No. 410, "Opp'n") mischaracterizes or makes inconsistent statements regarding Mr. Small's basis for his motion for advancement of fees.

First, though the Receiver throughout her opposition mischaracterizes or attempts to minimize Mr. Small's role with regards to the Receivership Entities, the Receiver in her affidavit concedes that Mr. Small was a portfolio manager for assets held by PPLO, PPVA, as well as PPCO (*i.e.*, through Credit Funding LLC). (*See* Affidavit of Receiver, ECF No. 411 at ¶ 3(c) ("Small was a Portfolio Manager of Platinum Liquid Opportunity Management (NY) LLC, the management company managing the Platinum Liquid Opportunity Master Fund LP ("PPLO"), beginning in 2012. At various times, he also was a Portfolio Manager of assets held by PPVA. He held a membership interest in Credit Funding[.]".) The Managing Member of Credit Funding LLC was PPCO, a Receivership Entity. Mr. Small worked on behalf of PPCO and pursuant to the Credit Funding Agreement is entitled to indemnification and advancement for his work as a portfolio manager. (*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.”.) And, as co-defendant Levy makes clear in his reply, there is no dispute that PPCO is relevant to the Criminal Matter as it is referenced throughout the Indictment. (See ECF No. 412 at 4-6.)

Second, Mr. Small is entitled to indemnification and advancement pursuant to the PPCO agreements set forth in his co-defendants’ motions, in addition to the Credit Funding Agreement. The Receiver erroneously states that Mr. Small relies only on the Credit Funding Agreement to support his motion for advancement of fees, (see Opp’n at 4, 13). We note that the Receiver’s Opposition is internally inconsistent on this point: on pages 4 and 13 of the Opposition the Receiver claims that Mr. Small relies only on the Credit Funding Agreement to support his motion for advancement of fees, while the Opposition later acknowledges that Mr. Small also relies on the PPCO LP Agreement, (see Opp’n at 24 (acknowledging that the PPCO LP Agreement is “relied on by Levy, Small and Mann”)). Mr. Small writes to clarify that he is entitled to indemnification and advancement under the PPCO agreements set forth in his co-defendant’s motion (see ECF No. 403 at 2-6) as well as the Credit Funding Agreement, and joins in those arguments.

Finally, the Credit Funding Agreement is clear that PPCO is required to advance Mr. Small’s fees and costs. As detailed in Mr. Levy’s reply, the Receiver’s argument that the Credit Funding Agreement is “ambiguous” is without merit. The meaning of the Credit Funding Agreement is unequivocal: “the Company shall advance” expenses “of defending the claim, action, suit or proceeding giving rise” to the claim for indemnification. (ECF 404-1 at § 11.2.) The Receiver’s attempt to argue that this provision is ambiguous should be rejected. The Credit Funding Agreement expressly names Mr. Small as a Portfolio Manager (see ECF 404-1 at § 6.2), and makes clear that PPCO (a Receivership Entity) as the Managing Member of Credit Funding is required to advance Mr. Small’s defense fees on behalf of Credit Funding, (see ECF 404-1 at §§ 6.2, 11.2).

For the foregoing reasons—as well as the arguments raised in the contemporaneous briefing by Mr. Small’s co-defendants—we respectfully request that the Court direct the Receiver to advance his reasonable attorneys’ fees and legal defense costs.

We thank the Court for its consideration.

Respectfully submitted,

/s/ Seth L. Levine

Seth L. Levine

Christos G. Papapetrou

Dylan A. Stern

cc: All Counsel of Record (via ECF)