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November 4, 2019

VIA ECF

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

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

Dear Judge Cogan:

This firm represents Melanie L. Cyganowski, as Receiver (the "Receiver"). On or about August 20, 2019, in connection with a document production by BDO USA LLP ("BDO") to the Receiver in response to a subpoena served on BDO as part of the Receiver's investigation of matters relating to the Platinum entities, the Receiver entered into the enclosed Confidentiality Agreement and Stipulated Protective Order with BDO (the "Protective Order").

The Receiver respectfully requests that the Court "So Order" the Protective Order. BDO has consented to its entry.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew S. Halpern".

Andrew S. Halpern

Encl.

cc: All Counsel of Record (via ECF, w/encl.)
Rebecca C. Martin, Esq. (via email, w/encl.)
Seth L. Friedman, Esq. (via email, w/encl.)
Greer Griffith, Esq. (via email, w/encl.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

-v-

PLATINUM MANAGEMENT (NY) LLC,
PLATINUM CREDIT MANAGEMENT, L.P.,
ET AL.,

Defendants.

Civil Action No. 16-cv-6848 (BMC)

CONFIDENTIALITY AGREEMENT AND STIPULATED PROTECTIVE ORDER

This CONFIDENTIALITY AGREEMENT AND STIPULATED PROTECTIVE ORDER (the “Order”) is executed as of August 20, 2019 (the “Effective Date”) by and among Melanie L. Cyganowski, solely in her capacity, pursuant to the October 16, 2017 Second Amended Order Appointing Receiver entered by this Court in this action (the “Receivership Order”), as the Receiver (the “Receiver”) of 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”) and BDO USA, LLP (“BDO USA” and together with the Receiver, collectively the “Parties” and each a “Party”) in connection with the above-captioned matter. To facilitate the disclosure of Discovery Material (as defined below) to the Receiver while protecting BDO USA from the claimed risk of public dissemination of such information, the Parties hereby agree that the disclosure of Discovery Material by BDO USA to the Receiver shall be governed by the following terms and conditions.

- 1. **Court Approval.** The Parties shall submit this Order to the Court for approval. The Parties shall abide by the terms of this Order pending its approval by the Court, and if this Order is not entered by the Court for any reason, the Parties shall continue to abide by its terms with respect to any Discovery Material (as defined below) produced by BDO USA to the Receiver prior to the Court’s decision not to enter this Order unless the Court otherwise determines.

- 2. **Scope and Definition of Discovery Material and Confidential Material.** This Order applies to all information, documents and tangible things exchanged, produced or otherwise disclosed by BDO USA to the Receiver in response to any discovery requests (formal or informal) by the Receiver (“Discovery Requests”), including without limitation,

deposition testimony (whether based upon oral examination or written questions), interrogatories, answers to interrogatories, requests for admission, responses to requests for admission, hard copy and electronic documents, information and tangible things as well as any and all copies, abstracts, digests, notes, summaries, and excerpts thereof (collectively referred to as "Discovery Material"). This Order applies to "Confidential Material," which means any information that BDO USA reasonably believes in good faith contains or constitutes non-public personal, confidential or commercially sensitive information that requires the protections provided in this Order, including, but not limited to, non-public information about employee compensation, tax data, or personal financial information; information constituting confidential research or business development; information that must be kept confidential pursuant to law or regulation; information reasonably likely to cause undue harm to the reputation of, or embarrassment to, any individual; any trade secret; or financial, technical, proprietary or other commercial information. Confidential Material may be used or disclosed only as permitted by the terms of this Order. Except as hereinafter provided, the Receiver agrees that the Discovery Material produced by BDO USA and designated Confidential Material by BDO USA shall be held confidential by the Receiver.

3. **Manner of Designation.** Any Confidential Material shall be designated by BDO USA as such by marking every such page "CONFIDENTIAL." Such markings should not obliterate or obscure the content of the material that is produced. Where marking every page of such materials is not reasonably practicable, such as with certain native file documents, BDO USA may designate material as "CONFIDENTIAL" by affixing the legend "CONFIDENTIAL" on the placeholder page or slipsheet associated with the document. BDO USA may also designate any Discovery Material as Confidential Material at any time, including, but not limited to, after it has been produced, by notifying the Receiver in writing of that designation. If BDO USA designates any Discovery Material as Confidential Material after it has been produced, such Discovery Material shall be treated as Confidential Material upon receipt by the Receiver (or any other person) of such notice. Any person receiving notice that Discovery Material has been designated as Confidential Material after its production shall promptly stamp all copies of such Discovery Material with "CONFIDENTIAL."
4. **Use and Disclosure of Confidential Material.** Confidential Material shall be used by the Receiver solely for the purposes of discharging her duties as set forth in the Receivership Order. Confidential Material, and any and all information contained therein, may not be given, shown, made available to or communicated by the Receiver (or anyone else entitled to receive it under the terms of this Order) except to the following:
 - (a) The Receiver or her employees and agents, legal counsel and legal counsel's staff working under the direction of such counsel;
 - (b) the Court, its officers and clerical staff overseeing the above-captioned matter;
 - (c) subject to paragraph 11 of this Order, any other court or tribunal (including arbitration tribunals) in connection with any proceeding brought or defended by or

on behalf of the Receiver (a "Follow-On Action"), and, subject to paragraph 6 below, the parties to such proceedings and their legal counsel;

- (d) court reporter, videographers, or other qualified persons taking testimony in the above-captioned matter or a Follow-On Action;
- (e) actual or potential witnesses and potential counterparties, and their respective counsel, who in good faith are shown or questioned about such material: (i) in order to assist the Receiver in the discharge of her duties, or (ii) in the investigation and pursuit of potential claims by or on behalf of the Receiver, provided that any potential counterparty to whom disclosure is made pursuant to this paragraph agrees not to use any Confidential Material in any way whatsoever in any pending or future proceeding against BDO USA;
- (f) independent experts or consultants assisting the Receiver in her investigations, the above-captioned matter, or a Follow-On Action, provided that such expert or consultant is using the Confidential Material solely in connection with the Receiver's investigations, the above-captioned matter, or a Follow-On Action;
- (g) outside photocopying, graphic production services, or litigation support services, as necessary or appropriate for use in connection with the above-captioned matter or a Follow-On Action;
- (h) issuers of an authorized governmental request, document request, subpoena, or other process, subject to paragraph 6 below;
- (i) any other person or entity with respect to whom BDO USA may consent in writing or as the Court may further order; and
- (j) For the avoidance of doubt, without the express written permission of BDO USA or further court order, the Receiver (or anyone else entitled to receive Confidential Material under the terms of this Order) may not disclose any Confidential Material (or information contained therein) to (i) legal counsel to the SEC, (ii) experts or consultants assisting the SEC or legal counsel to the SEC, or (iii) any agents thereof, except in connection with the joint investigation, joint pursuit of claims, or joint litigation by (or litigation between) one or more of the Receivership Entities; provided, however, that nothing in this Order shall preclude the disclosure of any Confidential Material to the Receiver, the Receivership Entities or their legal counsel.

5. **Prerequisite to Disclosure of Designated Material.** Before the Receiver (or anyone to receive Confidential Material under the terms of this Order) gives any person or their representative(s) identified in Paragraph 4(e) or 4(f), access to Confidential Material, the Receiver shall give such person or their representative(s) a copy of this Order and such persons or their representative(s) shall be bound to comply with the confidentiality provisions of this Order.

6. **Disclosure of Designated Material in Other Proceedings.**

- (a) If the Receiver (or any other individual or entity receiving Discovery Material covered by this Order) is subpoenaed in another action or proceeding (including any Follow-On Action described above) or served with a document demand in any such proceeding and such subpoena or document demand seeks Confidential Material, the Receiver (or other individual or entity) shall notify BDO USA (to the extent permitted by applicable law, court or tribunal rules, regulation or government agency) in email and hard copy via overnight mail to Seth Friedman and Rebecca C. Martin, McDermott Will & Emery LLP, 340 Madison Avenue, New York, New York 10173, sfriedman@mwe.com and rcmartin@mwe.com, within five (5) days of the receipt of such request, or within one (1) day of the receipt of such request if the return date is less than seven (7) days from receipt, of said subpoena or other process or order (and shall furnish BDO USA with a copy of the same). The Receiver shall not produce the Confidential Material until the earlier of: (i) receipt of prior written consent from BDO USA; (ii) the return date of the subpoena or other process (unless prior to the return date BDO USA files a motion to quash or a motion for a protective order, and the filing of the motion suspends the return date); or (iii) five (5) business days after a decision on any such motion to quash or motion for a protective order or such shorter period as the Court may direct.
- (b) Notwithstanding the foregoing and any other provision of this Order, if the Receiver is a party to a Follow-On Action which itself is confidential and in which a confidentiality order is in effect (a “Confidential Proceeding”) and in which the Receiver receives a valid subpoena or document demand seeking Confidential Material, then the Receiver may disclose the requested documents to the requesting party (“Follow-On Action Requesting Party”) and, provided that any Confidential Material that is disclosed is designated as Confidential and “attorneys’ eyes only” in the Confidential Proceeding. “Attorneys’ eyes only” materials shall not be disclosed to anyone other than the persons identified in the subparagraphs (a), (d), (f), and (g) of paragraph 4, and any of the following:
- (i) any court or tribunal (including arbitration tribunals) in connection with any Follow-On Action;
 - (ii) outside and in-house counsel for the Follow-On Action Requesting Party;
 - (iii) to any witness during the witness’s testimony during a deposition or hearing in the Confidential Proceeding and any counsel present during that testimony;
 - (iv) the author or prior recipient of the document marked as attorneys’ eyes only, which includes any person who, from the face of the document, is reasonably understood to have assisted in preparation of or received the document prior to the initiation of the Follow-On Action.

- (c) Any in-house counsel of the Follow-On Action Requesting Party who receives attorneys' eyes only material pursuant to paragraph 6(b)(ii), shall be bound by the terms of this Order, shall use the attorneys' eyes only material solely in accordance with this Order and not for business purposes, and shall not further disclose any attorneys' eyes only material within the Follow-On Action Requesting Party. Nothing in this Order shall prevent the Receiver from complying with a court or tribunal order or timely responding to a subpoena or document demand.

7. **Manner Of Objecting To Designated Material.** If the Receiver objects to the designation of any Confidential Material, the Receiver shall first raise the objection with BDO USA in writing, and confer in good faith to attempt to resolve any dispute. If the Parties cannot resolve their dispute the Receiver may submit a letter to the Court no more than three pages in length objecting to the designation and seeking its removal or other appropriate relief (a "Designation Objection"). BDO USA may submit a response letter to the Court no more than three pages in length within five calendar days of the date of submission of the Designation Objection. BDO USA shall have the burden of proving that the challenged material is entitled to protection.
8. **Exclusions.** The Receiver shall have no obligation under this Order as to Confidential Material which: (a) is known to or otherwise in the possession, custody, or control of the Receiver at the time of disclosure, without obligation of confidentiality; (b) is independently developed by the Receiver without reference to or use of BDO USA's Confidential Material (or the confidential information of another party); (c) becomes known to the Receiver from another source, unless the Receiver knows or reasonably believes that such other source was subject to a confidentiality restriction at the time of disclosure to the Receiver; or (d) is or becomes part of the public domain through no wrongful act of the Receiver.
9. **Unauthorized Disclosure of Confidential Material.** If the Receiver (or other individual or entity) learns that, by inadvertence or otherwise, they have disclosed Confidential Material to any person or in any circumstance not authorized under this Order, the Receiver (or other individual or entity) must immediately (a) use its best efforts to retrieve all copies of the Confidential Material; (b) inform the person or persons to whom unauthorized disclosure was made of all the terms of this Order; and (c) and within two days of learning of such unauthorized disclosure, notify BDO USA of the identity of the person or entity to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to recover the disclosed Confidential Material and ensure against further dissemination or use thereof.
10. **Inadvertent Production of Privileged Material.** Inadvertent production of any Discovery Material that BDO USA later claims in good faith should not have been produced because of the attorney-client privilege or work product doctrine ("Inadvertently Produced Privileged Information"), will not by itself constitute a waiver of any such privilege. Promptly after BDO USA discovers that it has produced Inadvertently Produced Privileged Information, BDO USA shall request the return of such Inadvertently Produced Privileged Information by identifying in writing the Discovery Material inadvertently

produced and the basis for withholding such Discovery Material from production. If BDO USA requests the return of Inadvertently Produced Privileged Information pursuant to this paragraph and the Receiver does not dispute the privilege claim, she shall promptly take all commercially reasonable steps to return or destroy the Discovery Material (and copies thereof) and shall take all commercially reasonable steps to sequester or destroy any work product that incorporates the Inadvertently Produced Privileged Information. If the Receiver disputes the privilege claim, she must notify BDO USA of the dispute and the basis therefor in writing within ten (10) days of receipt of BDO USA's notification. Other than for an in camera review in connection with seeking a determination by the Court, the Receiver may not use or disclose any alleged Inadvertently Produced Privileged Information until the dispute is resolved. The Parties shall thereafter meet and confer regarding the disputed privilege claim. If the Parties cannot resolve their dispute, either Party may seek a determination from the Court as to whether the privilege applies. BDO USA must preserve the Inadvertently Produced Privileged Information and the Receiver may not use the Inadvertently Produced Privileged Information for any purpose until the dispute is resolved.

11. **Court Filings.** No Confidential Material shall be filed in the public record absent the prior written consent of the BDO USA, an order of a court so permitting, or an order denying a request to file the material under seal. In the event that the Receiver wants to file with a court any Confidential Material and BDO USA does not consent to such material being filed in the public record, the Receiver shall make an application to the Court for (i) leave under 11 U.S.C. § 107, or other relevant rule or law, to file such material under seal, or (ii) a determination that such material should not be treated as confidential.

Before filing any Confidential Material with the Court as part of the public record in the above-captioned matter, the Receiver shall first consult with BDO USA to determine whether, with BDO USA's consent, the document or a redacted version of the document may be filed with the Court not under seal.

12. **Return or Destruction of Confidential Material.** Unless otherwise agreed to by the Parties, at the conclusion of the above-captioned matter and all Follow-On Actions, including any appeals from any judgment or order entered by this Court, the Receiver (or anyone else entitled to receive such material) shall destroy or return to BDO USA all Discovery Material (and any copy thereof) designated as "Confidential." Discovery Material that has been received electronically and that cannot be returned or destroyed must be electronically deleted and deleted from "trash" files. Notwithstanding anything to the contrary in this paragraph, the Receiver (and her counsel) may retain: (i) any and all items, including but not limited to Discovery Material designated as "Confidential" that were filed with the Court or elsewhere in connection with a Follow-On Action; (ii) counsel's work product which may contain "Confidential" information; and (iii) any Discovery Material required by law to be preserved; provided that counsel continues to treat all Confidential Material in the manner provided in this Order.
13. **Survival.** The provisions of this Order shall, absent written permission of BDO USA or further order of the Court, continue to be binding throughout and after the conclusion of these Chapter 15 Cases, including without limitation any appeals therefrom.

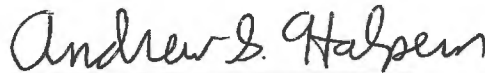
14. **No Waiver.** This Order does not affect the rights of BDO USA with respect to the Discovery Material, and BDO USA is not otherwise restricted from use or disclosure of its own Discovery Material. The production of Discovery Material shall not constitute an admission by BDO USA, nor waive any of BDO USA's rights, with respect to the propriety of their disclosure or their relevance, including, but not limited to, waiver of any claim or defense. Nothing in this Order shall be construed as precluding BDO USA from objecting to any use of Discovery Material. For the avoidance of doubt, BDO USA expressly reserves its right to object to the use of any Discovery Material in any future arbitration proceeding between the Parties and to seek appropriate relief from any such tribunal with respect to any Discovery Material, and the Receiver expressly reserves her right to oppose any such objection or request for relief.
15. **Modification.** Each of the Parties hereto shall be entitled to seek modification of this Order by application to the Court on notice to the other Parties hereto.
16. **Retention of Jurisdiction.** This Court retains jurisdiction over any dispute arising under this Order.

Dated: August 20, 2019
New York, New York



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Attorneys for the Receiver for the Receivership Entities

IT IS SO ORDERED,

Dated: November __, 2019
Brooklyn, New York

Honorable Brian M. Cogan
United States District Judge