UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, - against - PLATINUM MANAGEMENT (NY) LLC, *et al.*, Defendants.	Docket No. 16-CV-6848 (BMC)

STATEMENT OF THE JOINT OFFICIAL LIQUIDATORS OF PLATINUM PARTNERS VALUE ARBITRAGE, L.P. (IN OFFICIAL LIQUIDATION) IN OPPOSITION TO DISMISSAL OF RECEIVERSHIP

Martin Trott and Christopher Smith, in their capacities as the duly appointed Joint Official Liquidators ("**JOLs**") of Platinum Partners Value Arbitrage Fund, L.P. (in Official Liquidation) ("**PPVA**"), parties in interest in the above referenced proceedings, respectfully submit this statement (the "**Statement**") in connection with the Court's December 12, 2019 Order (the "**December Order**") requesting argument as to whether the above referenced receivership should be dismissed in favor of the filing of bankruptcy cases for the Receivership Entities[1] and authorizing parties in interest to submit written memoranda as to such issue. The JOLs oppose dismissal of the receivership, for the reasons discussed below.

STATEMENT IN OPPOSITION

1. The JOLs respectfully submit that dismissal of the receivership in favor of the commencement of bankruptcy cases for the Receivership Entities would be a waste of judicial

[1] The Receivership Entities are: 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 International Ltd, Platinum Partners Credit Opportunities Fund International (A) Ltd., Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Credit Management, L.P., Platinum Liquid Opportunity Management (NY) LLC (iii) Platinum Partners Liquid Opportunity Fund (USA) L.P. and Platinum Partners Liquid Opportunity Master Fund L.P. ("**PPLO**").

resources, cause undue delay, would prejudice the interests of PPVA, and would thwart the ongoing cooperative efforts of the JOLs and the Receiver to investigate and monetize assets, including litigation claims, for the benefit of all their respective stakeholders.

2. As the Court is aware, the JOLs are the duly appointed Joint Official Liquidators and Foreign Representatives of PPVA, which is in liquidation (the "**Cayman Liquidation**") before the Grand Court of the Cayman Islands (the "**Grand Court**").

3. From its inception through the commencement of the Cayman Liquidation in August 2016, PPVA, like the Receivership Entities before the commencement of this action, was operated and managed by Platinum Management (NY) LLC ("**Platinum Management**") and its fellow adviser entities, Platinum Credit Management, L.P., and Platinum Liquid Opportunity Management (NY) LLC (collectively with Platinum Management, the "**Platinum Advisers**"), and Platinum Advisors operated via Mark Nordlicht, Murray Huberfeld, David Bodner, David Levy and the other direct and indirect owners, controlling persons and employees (collectively "**Platinum Personnel**").

4. PPVA and the Receivership Entities were marketed as separate funds and had different, albeit some overlapping, investors. Platinum Personnel caused PPVA and either or both of PPCO and PPLO to invest in the same underlying assets, or to transfer/assign investments and/or loan funds between or among each fund. In addition, all of the documents relevant to the operation of PPVA and the Receivership Entities originally were housed on common servers located in the offices of the Platinum Advisers.

5. Since the commencement of this action and particularly since the appointment of Melanie Cyganowski as Equity Receiver (the "**Receiver**") for the Receivership Entities in summer 2017, the JOLs and the Receiver have worked together to analyze, investigate and, to the extent

possible, monetize the various common investments, transfers, transactions and potential claims involving PPVA and the Receivership Entities for the benefit of their respective stakeholders. The JOLs submit that commencement of a bankruptcy case would significantly impact the cooperative efforts and settlement discussions ongoing between the JOLs the Receiver on behalf of their respective estates.

6. For example, PPVA owns 55% and PPCO owns of 45% of Principal Growth Strategies, LLC ("**PGS**"). Before June 9, 2016, PGS owned a promissory note (the "**Agera Note**") convertible into 95% of the equity of Agera Energy LLC ("**Agera**"), an energy reseller.

7. The JOLs and Receiver have cooperated in investigating the facts and circumstances of the transfer of the Agera Note, and currently are working together in connection with the prosecution of claims arising out of such transfer. To that end, the JOLs commenced the action styled *Principal Growth Strategies, LLC, et al. v. AGH Parent, LLC, et al.*, C.A. No. 19-01319-CFC (the "**Agera Action**"), which is pending in the U.S. District Court for the District of Delaware.

8. PPVA also would be prejudiced by the additional costs and delays associated with commencing bankruptcy cases for the Receivership Entities, because it is a creditor of PPCO and PPLO. The amounts owed and nature of the claims are set forth in the proofs of claim filed by the JOLs on behalf of PPVA.

9. In addition, there remains a dispute as to the respective rights and interests of PPVA on the one hand and PPCO, including with respect to title and other fundamental property interests, to approximately $7.7 million in cash proceeds (the "**Navidea Proceeds**") resulting from the payoff of a promissory note originally issued to a subsidiary of PPVA in 2012 by Navidea Biopharmaceuticals, Inc. (as anytime amended, the "**Navidea Note**").

10. This Court was notified of the facts and circumstances of the dispute concerning the Navidea Proceeds in a July 5, 2017 reply memorandum filed by the Securities and Exchange Commission ("**SEC**") in further support of its then pending motion to appoint a substitute receiver. See *Reply in Further Support of its Application for Entry of a Second Amended Order Appointing Receiver and Appointment of a Substitute Receiver* [dkt. #211] (the "**SEC Reply**") at p. 5, n. 3 and Exhibits 1 and 2.

11. In August 2017, the JOLs and the current Receiver agreed that the Navidea Proceeds would be set aside and held by means of a bookkeeping entry, pending a final resolution of the parties' dispute over the ownership of those funds. The JOLs have operated in reliance upon their agreement with the Receiver. However, the JOLs understand that the Receiver has not yet otherwise segregated the Navidea Proceeds from other PPCO assets. The commencement of a bankruptcy case thus would significantly prejudice PPVA to the extent it could affect PPVA's right to claim all or a portion of the Navidea Proceeds. Should the Court be inclined to convert the Receivership into a bankruptcy, the JOLs respectfully request that (a) ample time be provided so as to allow the Receiver to fully segregate the Navidea Proceeds in a separate account maintained for purposes of effectuating the Navidea agreement and understanding, and (b) the Court direct and authorize the Receiver to segregate the Navidea Proceeds.

CONCLUSION

12. Under the circumstances, the JOLs respectfully submit that the receivership should continue and that no bankruptcy cases be filed on behalf of the Receivership Entities.

Dated: New York, New York
January 17, 2020

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