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January 19, 2020

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

Re: United States Securities and Exchange Commission et. al. v. Platinum Management, LLC et. al.
Docket No. E.D.N.Y. 16-CV-6848 (BMC)

Dear Judge Cogan:

My law firm is a general creditor to a number of the Platinum affiliates. My firm has a large unpaid invoice balance remaining due. My firm's representation involved pre-receivership litigation having no relationship to any of the pending civil or criminal matters. I have just learned of Your Honor's December 12, 2019 request for comments on dismissal of the instant action and having the matter proceed in Bankruptcy. Unfortunately all creditors were not advised of Your Honor's request. While I now know that the responses were due on January 17, as a general creditor I was never noticed of Your Honor's concerns. I respectfully ask that my position nonetheless be considered when Your Honor considers the issues.

Early in the appointment of the Receiver, I was in touch with the Receiver's office inquiring as to the payment of my invoice. In my discussions I received the impression that the Receiver was more concerned with maximizing the refunds to the investors, than prioritizing the payments to prepetition creditors. I was specifically told during one of my conversations with an associate of the Receiver, that the Receiver was not obligated to follow Bankruptcy Law priorities.

It is my understanding, although I do not profess to be an expert in bankruptcy laws, that under Bankruptcy Law, creditors have a priority over investors. I refer the Court to a footnote in the decision of In re Optimal U.S. Litig., 813 F Supp 2d 383, 399 fn 83 [SDNY 2011], wherein the District Court explained the prioritizing of general creditors over investors. The Court noted:

> In re Med Diversified, Inc., 461 F.3d 251, 258 (2d Cir. 2006) (quotation marks omitted) ("When a corporation becomes bankrupt, the temptation to lay aside the garb of a stockholder, on one pretense or another, and to assume the role of a creditor, is very strong, and all attempts of that kind should be viewed with suspicion."); Matter of Stirling Homex Corp., 579 F.2d 206, 213 (2d Cir. 1978) (quotation marks, alterations, and citation omitted) ("Where the debtor corporation is insolvent and is about to undergo complete liquidation, the equities favor the conventional general creditors rather than the allegedly defrauded stockholders. In such circumstances, the real party against which (the stockholders) are seeking relief is the body of general creditors of their corporation. . . . We will not allow stockholders whose claims are based solely on the alleged fraud that took place in the issuance of stock to deplete further the already meager pool of assets presently available to the general creditors.").

Under current Bankruptcy Law, it does not matter whether the investors were or were not part of the purported schemes. General creditors still have a priority.

Given my conversations with representatives of the Receiver, it is feared that unless Bankruptcy Law is followed, there will be a general inclination by the Receiver to avoid or compromise prepetition debts so as to enhance the availability of funds for the investors. This is the position that the Receiver has continually taken. Such would operate to the disadvantage of the general creditors.

Respectfully submitted,

s/ Ira A. Sturm
Ira A. Sturm

Cc: All participating parties by ECF