

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

16-CV-6848 (BMC)

PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :

Defendants. :
-----X

**NOTICE OF MOTION OF
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN
ORDER APPROVING HER SETTLEMENT WITH SCHAFER AND WEINER, PLLC**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Melanie L. Cyganowski, executed February 6, 2020 (the “*Receiver Decl.*”), the accompanying Memorandum of Law, and all prior proceedings had herein, Melanie L. Cyganowski, the duly appointed receiver (the “*Receiver*”) for Platinum Credit Management, L.P., 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, and Platinum Partners Liquid Opportunity Fund (USA) L.P. (collectively, the “*Receivership Entities*”), hereby moves this Court before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York, located at the United States District Court

for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an order approving the Settlement Agreement by and between the Receiver and Schafer and Weiner, PLLC, executed January 16, 2020, attached as Exhibit A to the Receiver Decl., and for such other and further relief as the Court deems appropriate (the “*Motion*”).

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be made in writing and (i) if by a party, electronically filed with the District Court or (ii) if by a non-party, electronically mailed to the Receiver at her e-mail address, platinumreceiver@otterbourg.com, in each case so as to be actually received no later than February 13, 2020.

PLEASE TAKE FURTHER NOTICE that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion, without further hearing or notice.

Dated: February 6, 2020
New York, New York

OTTERBOURG P.C.

By: Adam C. Silverstein
Adam C. Silverstein
A Member of the Firm
230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
asilverstein@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE :
COMMISSION, :
Plaintiff, :
-v- :
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
Defendants. :
-----X

No. 16-cv-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI,
AS RECEIVER, IN SUPPORT OF MOTION TO APPROVE
HER SETTLEMENT WITH SCHAFER AND WEINER, PLLC**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., 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 (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, “*Platinum*” or, following the commencement of this action, the “*Receivership*”), in support of my motion (the “*Motion*”) for

entry of an order approving the Settlement Agreement (the “*Settlement*”) by and between me, as Receiver, and Schafer and Weiner, PLLC (“*S&W*”), executed January 16, 2020.

2. A true and correct fully-executed copy of the Settlement is annexed hereto as Exhibit A.

3. For the reasons set forth in my accompanying Memorandum of Law, which discusses the background of, and rationale for, the Settlement with reference to publicly-filed documents, I respectfully submit that the Settlement affords the Receivership with *more than all* of the relief against S&W that the Receivership is currently seeking in this Court and, thus, should be approved.

4. Accordingly, I respectfully request that this Court approve the Motion, enter the Proposed Order, attached as Exhibit B hereto, and grant such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of February, 2020, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is hereby entered into this 14th day of January, 2020, by and between (1) Melanie L. Cyganowski, in her capacity as the court appointed receiver (the “**Receiver**”) for (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P. and (x) Platinum Partners Liquid Opportunity Master Fund L.P. (the entities referred to in (i)-(x) of this paragraph shall be collectively referred to as the “**Receivership Entities**”) and (2) Schafer and Weiner, PLLC (“**S&W**” and collectively with the Receivership Entities, the “**Parties**” and each a “**Party**”).

WHEREAS, the Receivership Entities were placed in receivership (the “**Receivership**” and all assets of the Receivership, the “**Receivership Estate**”) by orders of the United States District Court for the Eastern District of New York (the “**Receivership Court**”) in the action captioned, *Securities & Exch. Comm’n v. Platinum Mgmt. (NY) LLC, et al.*, 16 Civ. 06848 (BMC) (the “**Action**”).

WHEREAS, S&W received \$180,000 (the “**Pre-Receivership Fees**”) from the Receivership Estate on or about January 6, 2017 as partial payment of what S&W asserted were outstanding pre-Receivership attorneys’ fees and expenses owed to it by one or more of the Receivership Entities.

WHEREAS, S&W contends payment of the Pre-Receivership Fees from the Receivership Estate was proper.

WHEREAS, the Receiver contends that the payment of the Pre-Receivership Fees and S&W’s acceptance thereof after commencement of the Receivership was improper, and that the Pre-Receivership Fees should be returned to the Receivership Estate.

WHEREAS, S&W filed a fee application (the “**S&W Fee Application**”) in the Action (Dkt. No. 326) seeking payment of post-Receivership fees in the amount of \$459,729.25 and \$29,197.86 in expenses incurred during the Receivership.

WHEREAS, the Receiver objected to the S&W Fee Application and filed a cross-motion in the Action (Dkt. Nos. 328-29) seeking disgorgement of the Pre-Receivership Fees (the “**Cross-Motion**”).

WHEREAS, the Securities and Exchange Commission (“**SEC**”) also filed an objection to the S&W Fee Application in the Action (Dkt. No. 330).

WHEREAS, discovery, including party and non-party document productions and depositions, was taken in connection with the S&W Fee Application and Cross-Motion.

WHEREAS, by Memorandum Decision and Order, entered September 26, 2018 (the "**Order**"), the Receivership Court denied the S&W Fee Application and reserved judgment on the Cross-Motion (Action Dkt. No. 383).

WHEREAS, S&W has timely appealed the Order to the United States Court of Appeals for the Second Circuit (the "**Appeal**").

WHEREAS, S&W timely submitted a proof of claim in the Receivership for payment of all outstanding fees and expenses it claims are owed to it by the Receivership Estate for pre- and post-Receivership services rendered and expenses incurred (the "**Proof of Claim**").

WHEREAS, as a result of the Appeal, the parties hereto and the SEC participated in multiple mediation sessions conducted under the auspices of the Court of Appeals Mediation Program ("**CAMP**") in an effort to resolve their disputes, including all claims the Receiver maintains the Receivership has against S&W;

WHEREAS, the CAMP mediation was unsuccessful, and, on October 24, 2019, S&W timely filed a brief and appendix in support of its Appeal;

WHEREAS, the Receiver's and SEC's appellee briefs on the Appeal are due to be filed on January 23, 2020;

WHEREAS, in connection with the S&W Fee Application and Appeal, the Receivership Estate asserts that it has incurred, and continues to incur, litigation fees and expenses (the "**Receivership Fees and Expenses**"), currently exceeding \$300,000, excluding the substantial fees and expenses incurred in the CAMP mediation and negotiating this term sheet;

NOW, THEREFORE, the Receiver and S&W, each intending to be legally bound, and in exchange for the mutual covenants and promises set forth herein, agree to settle the S&W Fee Application, Appeal, Cross-Motion and all other claims by and against the other, without admission of liability, as follows:

1. **Required Approval of the Receivership Court.** Except for the terms of paragraph 2 hereof, this Agreement shall not become effective and binding unless and until it is approved by an order, in a form and substance mutually acceptable to both Parties, entered by the Receivership Court (the "**Approval Order**").

2. **When Agreement Voidable or Void.**

a. The Parties agree to use their best reasonable best efforts to promptly seek and obtain the Receivership Court's approval of this Agreement through the filing of a motion, supporting papers and proposed Approval Order in the Action requesting such relief and which complies with the terms of paragraph 10 below (collectively, the "**Approval Motion**").

b. In the event that the Approval Motion is denied or the Receivership Court determines to enter an order approving the Agreement that is materially different from the

proposed Approval Order submitted with the Approval Motion, then then this Agreement immediately shall be deemed, and shall be, void *ab initio* and of no force and effect, except that the Receiver shall return to S&W the Confessed Judgment provided to the Receiver by S&W pursuant to paragraph 4 hereof.

c. In the event that the Approval Order is entered, but later vacated by the Receivership Court or the United States Court of Appeals for the Second Circuit, then this Agreement immediately shall be deemed, and shall be, void *ab initio* and of no force and effect, except that, within seven (7) days after the Approval Motion is denied or the Approval Order is vacated, the Receiver on behalf of the Receivership Estate shall (i) return in good and sufficient funds each Installment that S&W has paid to the Receivership Estate pursuant to paragraph 3 hereof, (ii) if the Confessed Judgment has not been filed yet with the Supreme Court of the State of New York, County of New York (“New York Supreme Court”), return to S&W the Confessed Judgment provided to the Receiver by S&W pursuant to paragraph 4 hereof; and (3) if the Confessed Judgment has been filed with the New York Supreme Court, file a complete satisfaction of judgment with the Clerk of the New York Supreme Court.

d. If the Agreement becomes void by any of the circumstances set forth in subparagraphs (b) or (c) of this paragraph 2, then the Parties shall promptly meet and confer in an effort to agree on a process and schedule for resuming litigation of the S&W Fee Application, Appeal and/or Cross-Motion.

3. **S&W’s Settlement Payment to the Receivership Estate.** In consideration of the terms and conditions set forth herein, and for other and good and valuable consideration, the receipt of which is acknowledged hereby, S&W shall pay to the Receivership Estate, in good and sufficient funds, the sum of Two Hundred Eighty Thousand and Zero Cents (\$280,000.00) (the “**Settlement Amount**”), in accordance with the following payment schedule (each payment constituting an “**Installment**”):

- a. \$60,000, (i) if no objection to the Approval Motion is timely filed, within five (5) days after entry of the Approval Order, or (ii) if any objection to the Approval Order is timely filed, on the thirty-first (31st) day after entry of the Approval Order (the date on which the \$60,000 payment is made in accordance herewith, the “**First Payment Date**”);
- b. \$40,000, within 90 days after the First Payment Date;
- c. \$90,000, by no later than one year after the First Payment Date; and
- d. \$90,000, by no later than two years after the First Payment Date.

Each Installment shall be paid in accordance with written wiring instructions to be provided by the Receiver to S&W (i) at least three business days in advance of the First Payment Date and (ii) if subsequently modified by the Receiver, at least three business days in advance of any Installment payment to be made in accordance with such instruction, and S&W shall verify the authenticity of such instructions orally with the Receiver or her counsel, Erik B. Weinick,

Esq., prior to wiring the Installment. Upon receipt of each Installment, the Receiver shall deliver to S&W notice of receipt of payment of the Installment.

4. **Confessed Judgment.** Contemporaneously with the execution of this Agreement, S&W shall deliver to the Receiver an affidavit of confession of judgment (the “**Confessed Judgment**”) in the form and substance of Exhibit A hereto. The Confessed Judgment shall be held in escrow by the Receiver or her counsel, unless and until S&W defaults on the timely payment of any Installment in accordance with paragraph 3 hereof and has not cured such default in accordance with paragraph 5 hereof.

5. **Default on Timely Payment of Any Installment.** In the event S&W fails to timely pay any Installment in accordance with paragraph 3 hereof, time being of the essence, the Receiver at any time thereafter may deliver to S&W a written notice of default (the “**Default Notice**”). If S&W does not cure the default by paying the Installment within 10 days after the delivery of the Default Notice, then: (a) all Installments not yet paid shall immediately become due and payable, without any further action by the Receiver and notwithstanding any contrary provision in paragraph 3 hereof; (b) interest on all unpaid Installments shall become immediately due and payable, without any further action by the Receiver and notwithstanding any contrary provision in this Agreement, and such interest shall be deemed to have begun to accrue at the rate of 9% per annum (calculated based upon a 365-day year) from the date the Approval Order is entered through the date when the Settlement Amount, plus applicable interest, is paid in full; (c) S&W agrees to pay to the Receiver on behalf of the Receivership Estate the litigation fees and expenses that the Receivership Estate has incurred, and continues to incur, in connection with the S&W Fee Application, Cross-Motion and Appeal, excluding the substantial fees and expenses incurred in the CAMP mediation and negotiating the term sheet and this Agreement, currently in the estimated approximate amount of \$275,000; and (d) (i) the Receiver shall have the right, but not the obligation, to file the Confessed Judgment in the New York Supreme Court, to which jurisdiction S&W submits for all purposes related to the filing and enforcement of the Confessed Judgment; (ii) S&W agrees that all amounts accurately stated in the Confessed Judgment as being due and owing by S&W to the Receiver are due and owing by S&W to the Receiver; and (iii) S&W authorizes the Receiver to fill in with accurate information the blank date(s) and amount(s) not yet known as of the execution of this Agreement, including the date when the Approval Order is entered, the amount of accrued interest on all unpaid Installments running from the entry of the Approval Order, and the then current total of the litigation fees and expenses that S&W has agreed to pay in paragraph 5(c), and to file the Confessed Judgment on S&W’s behalf in the New York Supreme Court. On behalf of the Receivership, the Receiver represents and warrants that any dates or amounts that she, or any of her attorneys or representatives, may insert into the Confessed Judgment to be filed with the New York Supreme Court will be accurate as of the date the Confessed Judgment is filed.

6. **Appeal to the United States Court of Appeals for the Second Circuit.** Promptly after execution of this Agreement, the Parties shall jointly notify the United States Court of Appeals for the Second Circuit (the “**Second Circuit**”) that the Appeal has been settled, subject to approval by the Receivership Court, and jointly request a stay of the briefing schedule. Within seven (7) days after entry of the Approval Order, S&W shall file a motion, or such other papers as may be necessary or appropriate, to withdraw, voluntarily dismiss or otherwise

terminate the Appeal; and the Receiver, or her counsel, shall execute any papers prepared by S&W necessary or appropriate to enable S&W to withdraw, voluntarily dismiss or otherwise terminate the Appeal.

7. **Return of the Confessed Judgment.** Upon receipt of the Settlement Amount timely paid in full in good and sufficient funds in accordance with the terms of paragraph 3 hereof, the Receiver shall return to S&W the unfiled Confessed Judgment within five (5) business days.

8. **Releases.**

(a) Upon the thirty-first (31st) day following entry of the Approval Order, the Receiver, on behalf of herself in her capacity as Receiver and on behalf of the Receivership Estate and each of the Receivership Entities, hereby releases, discharges and covenants not to sue S&W and its partners, shareholders, members, employees, agents and representatives, from and for all actions, causes of action, suits, claims, and demands whatsoever for, upon, or by reason of any matter, cause or thing which in any way arises from or relates to S&W's representation of the Receivership Estate or any of the Receivership Entities, from the beginning of the world to the day and date of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall waive or release any claims by the Receiver for any payments or performance due from S&W under this Agreement and/or the Confessed Judgment.

(b) Upon the thirty-first (31st) day following entry of the Approval Order, S&W, for itself and its partners, shareholders, members, employees, agents and representatives, hereby releases, discharges and covenants not to sue the Receiver, in her capacity as Receiver, the Receivership Estate or each of the Receivership Entities from and for all actions, causes of action, suits, claims, and demands whatsoever for, upon, or by reason of any matter, cause or thing which in any way arises from or relates to S&W's representation of the Receivership Estate or any of the Receivership Entities, from the beginning of the world to the day and date of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall waive or release any claims by S&W for any payments or performance due from the Receiver under this Agreement.

9. **Injunction Preventing Further Lawsuits.** The Parties agree that it is an essential basis of the bargain of this Agreement, and that the Parties shall indicate to the Receivership Court in the Approval Motion that it is an essential basis of the bargain of this Agreement, that the Approval Order contain an injunction preventing (i) each of the Receiver and Receivership Estate from filing or pursuing any claim, and (ii) the SEC from filing or pursuing any monetary claim, against S&W, its partners, shareholders, members, employees, agents and representatives for damage to the Receivership Estate which in any way arises from or relates to S&W's representation of the Receivership Estate or any of the Receivership Entities. Notwithstanding the foregoing or anything to the contrary in this Agreement or the Approval Order that is entered, the Approval Order shall not bar the Receiver from asserting any claim for payments or performance due from S&W under this Agreement and/or the Confessed Judgment.

10. **SEC's Approval of Settlement.** The Receiver represents and warrants that (i) the SEC will indicate on the record its support of this Agreement, the relief requested in the Approval Motion and the Receivership Court's entry of the Approval Order, and (ii) the SEC will not take any action inconsistent with the support represented and warranted in subparagraph (i) of paragraph 11.

11. **Agreement Subject to FRE 408.** This Agreement shall be deemed to fall within the broadest protections afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence and any comparable or similar provisions of state law. Neither this Agreement, nor the fact of its existence, nor any terms hereof, nor any negotiations had or actions taken with respect to or under this Agreement, shall be offered or received in evidence in any case or proceeding involving the Receiver, the Receivership Estate, any of the Receivership Entities, S&W or any other party released pursuant to the provisions of this Agreement in any court, tribunal or administrative agency to prove liability. Nothing herein is intended to limit the parties hereto from utilizing this Agreement to implement and enforce its provisions.

12. **Representations and Warranties.** Each Party represents and warrants that: (i) she or it has been represented by counsel in connection with this Agreement and is executing this Agreement with full knowledge and understanding of its terms; (ii) her or its signatory has full authority to execute the Agreement on her or its behalf and to bind herself or itself to the Agreement by execution hereof; (iii) each Party has obtained, or will obtain in the Approval Order, all necessary legal approvals to enter into, and bind herself or itself to, this Agreement; (iv) the execution and delivery of this Agreement will not violate any agreement, court order, administrative order of any governmental entity, or any law or governmental regulation; and (v) she or it has not sold, assigned or otherwise transferred to any person any of her or its rights with respect to the claims released in this Agreement. All representations and warranties set forth in this Agreement shall survive both its execution and entry of the Approval Order.

13. **Attorney's Fees.** Any Party required to take steps to enforce the terms of this Agreement as a result of the other Party's non-performance shall be entitled to reimbursement by the other Party of that Party's costs, including reasonable attorneys' fees and expenses, in connection therewith.

14. **Miscellaneous.**

a. **Notice.** All notices and other communications given and made pursuant to this Agreement shall be in writing and shall be deemed delivered: (a) upon personal delivery to the Party to be noticed; (b) upon delivery by electronic mail or facsimile when confirmed by the recipient, if sent during normal business hours of the recipient, and if not so confirmed or not during normal business hours of the recipient, then on the next business day; or (c) when sent by Federal Express or comparable overnight courier, one business day after delivering the letter or package to Federal Express or comparable overnight courier service

If to the Receiver:

Otterbourg P.C.
Attn: Adam C. Silverstein, Esq.
Erik B. Weinick, Esq.
230 Park Avenue
New York, New York 10169
acsilverstein@otterbourg.com
eweinick@otterbourg.com

-and-

Platinum Partners
Attn: Brent Weisenberg, Esq.
230 Park Avenue, Third Floor West, Suite 323
New York, New York 10169
bweisenberg@platinumlp.com

If to S&W:

Hon. Steven W. Rhodes (Ret.)
1610 Arborview Boulevard
Ann Arbor, MI 48103
rhodessw@comcast.net

Schafer and Weiner, PLLC
Attn: Daniel J. Weiner, Esq.
40950 Woodward, Avenue, Ste. 100
Bloomfield Hills, MI 48304
dweiner@schaferandweiner.com

b. **Venue and Choice of Law.** Except with respect to filing and enforcing the Confessed Judgment, the Parties consent and submit to the exclusive jurisdiction of the Receivership Court with respect to any actions or proceedings relating to the enforcement or interpretation of this Agreement, and any Party bringing an action or proceeding relating to the enforcement or interpretation of this Agreement shall bring such action or proceeding in the Receivership Court. This Agreement and all claims and disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles. Each of the Parties hereto hereby waives any right to a trial by jury in any action, proceeding or counterclaim based upon or arising out of this Agreement or any of the transactions related hereto, and agrees that any such action, proceeding or counterclaim shall be tried before a court and not before a jury.

c. **Entire Agreement.** This Agreement constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Agreement supersedes and

replaces any and all prior or contemporaneous verbal or written agreements or understandings between the Parties concerning the subject matter hereof, including, but not limited to, any term sheets exchanged prior to the execution of this Agreement. The Parties acknowledge that this Agreement is not being executed in reliance on any verbal or written agreement, promise or representation not contained herein.

d. **No Oral Modifications.** This Agreement may be modified or amended only by a writing signed by a duly authorized representative of each of the Parties hereto. No waiver of any breach of any term or provision of this Agreement shall be construed as a waiver of any subsequent breach.

e. **Construction.** This Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Agreement.

f. **Headings.** The headings in this Agreement are intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any term in this Agreement.

g. **Binding Effect; Successor and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns; provided, that no Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed, and any assignment not in accordance with the terms hereof shall be null and void *ab initio*.

h. **Costs.** Each Party shall bear her or its own costs in connection with the negotiation and execution of this Agreement and the transactions contemplated hereunder.

i. **Severability.** If any portion or portions of this Agreement or any document executed in connection herewith are held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining provisions of this Agreement or any document executed herewith shall otherwise remain in full force and effect and be construed as if such invalid portion or portions has not been included herein.

j. **Further Assurances.** The Parties each agree to execute such further and additional documents, instruments and writings as may be reasonably necessary, proper, required, desirable or convenient for the purpose of fully effectuating the terms and provisions of this Agreement.

k. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart.

1. **PDFs as Originals.** This Agreement may be executed using facsimile or PDF signatures, with the same effect as if the signatures were original. Facsimile or electronic copies of this Agreement shall be deemed for all purposes to have the same force and effect of the original thereof.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date set forth above.

[SIGNATURE PAGES TO FOLLOW]

MELANIE L. CYGANOWSKI, in her capacity as the court-appointed receiver for (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd, (v) Platinum Partners Credit Opportunities Fund International (A) Ltd, (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P. and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

SCHAFFER AND WEINER, PLLC

DATED: January 15, 2020

DATED: January __, 2020

By: 

By: _____

Name: MELANIE CYGANOWSKI
as Receiver

Name: _____

Title: _____

MELANIE L. CYGANOWSKI, in her capacity as the court-appointed receiver for (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd, (v) Platinum Partners Credit Opportunities Fund International (A) Ltd, (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P. and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

SCHAFFER AND WEINER, PLLC

DATED: January __, 2020

By: _____

Name: _____

DATED: January 14, 2020

By: 

Name: DANIEL J. WEINER

Title: PARTNER

EXHIBIT A
(Affidavit of Confession of Judgment)

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

| | | |
|--|---|------------------------|
| ----- | X | |
| MELANIE L. CYGANOWSKI, AS RECEIVER FOR | : | Index No. |
| PLATINUM PARTNERS CREDIT OPPORTUNITIES | : | |
| MASTER FUND LP, PLATINUM PARTNERS CREDIT | : | |
| OPPORTUNITIES FUND (TE) LLC, PLATINUM | : | |
| PARTNERS CREDIT OPPORTUNITIES FUND LLC, | : | AFFIDAVIT FOR |
| PLATINUM PARTNERS CREDIT OPPORTUNITIES | : | CONFESSION OF |
| FUND INTERNATIONAL LTD, PLATINUM | : | <u>JUDGMENT</u> |
| 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, PLATINUM PARTNERS LIQUID | : | |
| OPPORTUNITY FUND (USA) L.P. AND PLATINUM | : | |
| PARTNERS LIQUID OPPORTUNITY MASTER FUND | : | |
| L.P., | : | |
| | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| - against - | : | |
| | : | |
| SCHAFFER & WEINER, PLLC, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |

STATE OF MICHIGAN)
) ss:
 COUNTY OF OAKLAND)

DANIEL J. WEINER, being duly sworn, deposes and says:

1. I am a Co-Founder and Senior Partner of Schaffer & Weiner, PLLC (“S&W”), and am duly authorized by S&W to execute this Affidavit of Confession of Judgment on its behalf (the “Confession of Judgment”).

2. On behalf of S&W, I hereby confess judgment herein and authorize the entry thereof in favor of Melanie L. Cyganowski (the “Receiver”), as court-appointed receiver for

Platinum Partners Credit Opportunities Master Fund LP, 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, Platinum Partners Liquid Opportunity Fund (USA) L.P. and Platinum Partners Liquid Opportunity Master Fund L.P. (collectively, the “Receivership Entities”) and against S&W, in the County of New York in the sum of \$ _____, equal to \$280,000.00 minus any payments made to the Receiver by or behalf of S&W pursuant to a Settlement Agreement between the Receiver and S&W, dated as of January __, 2020 (the “Settlement Agreement”), plus (i) interest on such amount at the rate of 9% per annum running from _____ and (ii) attorneys’ fees and expenses incurred by the Receiver and agreed to be reimbursed by S&W in the amount of \$ _____.

3. This Confession of Judgment is for an obligation in an amount certain due to the Receiver under the following facts:

- (a) The Receiver and S&W duly entered into the Settlement Agreement, whereby S&W, among other things, (i) agreed to pay to the Receiver the sum of Two Hundred Eighty Thousand Dollars and Zero Cents (\$280,000.00) in good and sufficient funds, paid via multiple installments of between \$40,000 and \$90,000, inclusive, beginning on the 31st day following the entry of an order by the United States District Court for the Eastern District of New York approving the Settlement Agreement, which order was entered on _____, and ending two years later on _____.

The Settlement Agreement further provides that upon S&W's default under the Settlement Agreement by failing to make any installment payment in accordance with the provisions of the Settlement Agreement, then, upon S&W's failure to cure the default within 10 days following the Receiver's delivery of written notice of default, the Receiver may file this Confession of Judgment and seek entry of a Judgment against S&W in the amount of \$ _____, equal to \$280,000, minus the installment payments received by the Receiver in good and sufficient funds pursuant to the Settlement Agreement, plus (i) interest thereon at the rate of 9% per annum running from _____, and (ii) attorneys' fees and expenses due and owing to the Receiver in the amount of \$ _____.

(b) On _____, S&W failed to make an installment payment in accordance with the provisions of the Settlement Agreement. On _____, the Receiver delivered written notice of default in accordance with the terms of the Settlement Agreement. S&W failed to cure the default within 10 days thereafter.

4. This Confession of Judgment is not for the purpose of securing the Receiver against a contingent liability.

5. This Confession of Judgment is solely against S&W, on whose behalf I am authorized to confess judgment, and no other parties.

6. This affidavit is not made in connection with an agreement for the purchase of \$1,500 or less of any commodities for any use other than a commercial or business use upon any deferred plan of payments whereby the price or cost is payable in two or more installments.

7. S&W consents to the jurisdiction of the Supreme Court of the State of New York, County of New York for all purposes relating to the filing and/or enforcement of this Confessed Judgment or any judgment entered by the court in connection therewith.

DANIEL J. WEINER

Sworn to before me this ____ day
of _____ 2020

NOTARY PUBLIC

EXHIBIT B

Proposed Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (BMC)

PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :

Defendants. :

-----X

[PROPOSED]
ORDER APPROVING RECEIVER’S MOTION FOR ORDER
APPROVING HER SETTLEMENT WITH SCHAFFER AND WEINER, PLLC

THIS MATTER coming before the Court on the Motion (along with all supporting papers, the “*Motion*”) of Melanie L. Cyganowski, the duly appointed receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities 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 the receivership estates of which, the “*Receivership Estate*”), for entry of an order approving the Settlement Agreement between the

Receiver and Schafer and Weiner, PLLC (“*S&W*”), executed January 16, 2020 (the “*Settlement*”), a fully-executed copy of which is attached as Exhibit A to the Receiver’s Declaration in Support of the Motion [Dkt. Nos. ____] and the Court having considered the Motion and exhibits and other documents filed in support of the Motion; and the Court having found that the Motion complies with applicable standards for granting the relief requested therein and that the settlement is in the best interests of the Receivership; and after due deliberation and for good and sufficient cause shown; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Settlement, and each of the terms therein, is approved; and it is further

ORDERED that, in accordance with the terms of the Settlement, each of the Receiver and the Receivership Entities is hereby permanently enjoined from filing or pursuing any claim against S&W, its partners, shareholders, members, employees, agents and representatives which in any way arises from or relates to S&W’s representation of the Receivership Estate or any of the Receivership Entities, except for any claim for payments or performance due from S&W under the terms of the Settlement or the exhibit thereto; and it is further

ORDERED that, in accordance with the terms of the Settlement, the United States Securities and Exchange Commission is hereby permanently enjoined from filing or pursuing any monetary claim against S&W, its partners, shareholders, members, employees, agents and representatives for damage to the Receivership Estate which in any way arises from or relates to S&W’s representation of the Receivership Estate or any of the Receivership Entities, except for any claim for payments or performance due from S&W under the terms of the Settlement or the exhibit thereto.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- x
SECURITIES AND EXCHANGE COMMISSION, :

: 16-CV-6848 (BMC)

Plaintiff, :

- against - :

PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; MARK :
NORDLICHT; DAVID LEVY; DANIEL SMALL; URI :
LANDESMAN; JOSEPH MANN; JOSEPH :
SANFILIPPO; and JEFFREY SHULSE, :

Defendants. :
----- x

**MEMORANDUM OF LAW OF MELANIE L. CYGANOWSKI,
AS RECEIVER, IN SUPPORT OF MOTION TO
APPROVE HER SETTLEMENT WITH SCHAFFER AND WEINER, PLLC**

OTTERBOURG P.C.
230 Park Avenue
New York, New York 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of the various entities listed below¹ (individually and collectively, “*Platinum*” or, after the instigation of the receivership, the “*Receivership Entities*” or “*Receivership*,” and the collective estate of which hereafter being referred to as the “*Receivership Estate*”), respectfully submits this Memorandum of Law in Support of her motion (the “*Motion*”) for approval of the Settlement Agreement, submitted as Exhibit A to the Declaration of Melanie L. Cyganowski, as Receiver (the “*Receiver Decl.*”), by and between the Receiver and Schafer and Weiner, PLLC (“*S&W*”), executed January 16, 2020 (the “*Settlement*”).

PRELIMINARY STATEMENT

By this Motion, the Receiver seeks Court approval of the Settlement resolving all claims between the Receiver and S&W with respect to S&W’s legal representation of Platinum, both before and after the commencement of the receivership. As more fully explained below, the Settlement provides the Receivership with *more* than all of the relief that the Receiver has sought from S&W in this Court, is, thus, in the best interests of the Receivership and, respectfully, should be approved.

BACKGROUND

The Receiver assumes the Court’s general familiarity with the background, or at least certain background, preceding the Settlement, the Court having denied S&W’s motion for payment of legal fees and expenses [Dkt. Nos. 320-21, Minute Order entered May 15, 2018 (the

¹ The entities in receivership are Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Partners Credit Opportunities Fund International Ltd. and Platinum Partners Credit Opportunities Fund International (A) Ltd. (individually and collectively, “*PPCO*”), Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P. (individually and collectively, “*PPLO*”).

“*Minute Order*”), Dkt. Nos. 326-30, 332, 335, 343-46] by Memorandum Decision and Order, entered September 26, 2018 (the “*Decision*”). In brief, the pertinent background is as follows:

A. The Parties and Interested Parties to the Settlement

The Receiver was appointed as successor receiver of the Receivership Entities by Order entered July 6, 2017 [Dkt. No. 216]. The Order prescribing the Receiver’s powers and duties, the Second Amended Order Appointing Receiver [Dkt. No. 276] (the “*Receiver Order*”), authorizes the Receiver, among other things, “to solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out the duties and responsibilities described in this Order,” and provides that “[t]he Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.” (Receiver Order ¶52)

S&W is a law firm located in Bloomfield Hills, Michigan that was retained by Platinum in August 2015 to provide legal services in connection with Platinum’s then distressed loan (the “*Arabella Loan*”) to Arabella Exploration, Inc. (with its affiliates, “*Arabella*”). (Decision at 1-2) After the instigation of the receivership, the Receiver’s predecessor, Bart Schwartz (the “*Prior Receiver*”), continued to use S&W’s services in connection with the Arabella Loan, but without prior Court approval. (Decision at 3-4) Also after the start of the Receivership, the Prior Receiver sold a participation in the Arabella Loan to a third party. (*Id.*) The proceeds of the participation were used by the Receivership, among other things, to pay \$180,000 to S&W to be applied to outstanding pre-receivership fees (the “*Pre-Receivership Fees*”). [Dkt. No. 329 at 6-10]

The Securities and Exchange Commission (the “*SEC*”), while not a party to the Settlement, was a party to S&W’s motion for legal fees and expenses [Dkt. No. 330], was made

aware of, and consented to, the terms of the Settlement, and (as explained below) has consented to the entry of a limited injunction against it in connection with the Settlement.

B. S&W's Fee Motion and the Receiver's Cross-Motion for Disgorgement

On May 4, 2018, S&W filed an application for a pre-motion conference to authorize the filing of a motion for payment of S&W's post-receivership fees and expenses in connection with Arabella. [Dkt. No. 320] In her response, the Receiver agreed that a pre-motion conference was appropriate, but disputed S&W's claimed entitlement to post-receivership fees and raised certain ethical questions regarding S&W's conduct. [Dkt. No. 321] In the Minute Order, the Court waived the requirement for a pre-motion conference, authorized S&W to file its motion, but advised the parties that "it is extremely unlikely that this Court is going to accept any consensual resolution of S&W's fee application, since allegations of bad faith have been raised and it is in the public interest to determine whether those allegations are valid or not." (Minute Order)

S&W filed its application (the "*Fee Application*") for payment of legal fees in the amount of \$459,729.25 and expenses in the amount of \$29,197.86 (collectively, "*Post-Receivership Fees*") for the period of December 19, 2016 through June 13, 2017. [Dkt. No. 326] Both the Receiver and the SEC opposed the Fee Application, and the Receiver filed a cross-motion for disgorgement of the Pre-Receivership Fees (the "*Disgorgement Cross-Motion*"). [Dkt. Nos. 330, 332]

The Court entered the Decision, denying the Fee Application, on September 26, 2018. [Dkt. No. 383] The Court reasoned that, under the Receiver Order, "prior court approval was a prerequisite to becoming a retained professional entitled to reasonable compensation," and, here, S&W's retention was never applied for with, or approved by, the Court. (*Id.* at 9-11) The Court also deferred ruling on the Disgorgement Cross-Motion because "any argument that S&W is not

entitled to the pre-receivership fees that it has already received must be made in connection with full briefing and, if necessary, an evidentiary hearing on the merits of these issues.” (*Id.* at 12)

C. The Appeal

On October 26, 2018, S&W filed a Notice of Appeal from the Decision (the “*Appeal*”). [Dkt. No. 409] Following numerous Second Circuit Court of Appeals Mediation Program (CAMP) sessions over an extended period of time, S&W filed its appellant’s brief on October 25, 2019. The Receiver’s and SEC’s appellees’ briefs were due on January 23, 2020. On January 22, 2020, all parties to the Appeal filed a joint motion to extend the briefing schedule on the Appeal pending this Court’s approval of the Settlement. The motion for an extension of time, and the Appeal in general, remain pending.

D. The Settlement

If approved by the Court, the Settlement—which becomes effective only after the Court approves it—would resolve all claims between the Receiver and S&W (and all monetary claims between the SEC and S&W) arising out of or relating to S&W’s representation of Platinum, including the Fee Application, the Disgorgement Cross-Motion and the Appeal.

In summary, the fundamental terms of the Settlement, if and when effective, are as follows:

- S&W releases all claims against the Receivership arising from or relating to its representation of Platinum, including all amounts sought in the Fee Application, and will voluntarily dismiss or withdraw the Appeal;
- S&W will pay the Receivership the total sum of \$280,000 (the “*Settlement Payment*”) over the course of two years. The payment, paid in installments (each an

“*Installment*”), would provide the Receivership with all of the relief, plus an additional \$100,000, sought by the Receiver in the Disgorgement Cross-Motion;

- S&W is providing a signed Affidavit of Confession of Judgment (the “*Judgment*”), consenting to entry of judgment against it by the Clerk of the Court of New York County in the amount of the Settlement Payment, plus interest, plus the Receiver’s legal fees arising from the Fee Dispute (currently totaling an estimated \$275,000), minus all paid Installments theretofore, and authorizing the Receiver to file the Judgment in the event that S&W misses any Installment payment deadline, after receiving notice and an opportunity to cure;

- The Receiver releases S&W of all claims against S&W arising from or relating to S&W’s representation of the Receivership Estate or any of the Receivership Entities, including, but not limited to, all amounts in the Disgorgement Cross-Motion; and

- The Receiver and SEC consent to the entry of an injunction in the Order approving the Settlement, as an essential basis of the bargain of the Settlement, preventing (i) each of the Receiver and the Receivership from filing or pursuing any claim, and (ii) the SEC from filing or pursuing any monetary claim for damage to the receivership estate, against S&W arising from or relating to its representation of the Receivership Estate or any of the Receivership Entities.

ARGUMENT

THE MOTION SHOULD BE GRANTED

The decisions of an SEC receiver generally are governed by the business judgment rule: “In carrying out [his or her] duty, the receiver must exercise ordinary care and prudence, that is, the same care and diligence that an ordinary prudent person would exercise in handling his or

own estate, or under like circumstances.” *Securities Exch. Comm’n v. Kirkland*, 2012 WL 3871920, at *2 (M.D. Fla. Aug. 1, 2012 (citations omitted)).

The Settlement not only falls squarely within the business judgment of the Receiver, but satisfies the more exacting level of scrutiny to the Settlement that the Court indicated it would apply in the Minute Order, because the Settlement grants the Receiver *more than* all of the relief to which she is currently seeking in this Court. Accordingly, the Settlement should be approved.

The Settlement will provide the Receiver with all of the relief to which the Receiver would be entitled were she to prevail on the Fee Application, the Appeal *and* the Disgorgement Cross-Motion, *plus* an additional \$100,000 *and* without any risk of loss or incurrence of further legal fees. That is because the Settlement would release any claim by S&W against the Receivership, pay the Receivership all of the Pre-Receivership Fees sought in the Disgorgement Cross-Motion, and pay the Receivership an additional \$100,000. Further, the Settlement provides the Receiver with an effective enforcement mechanism—entry of a Judgment against S&W for an even greater amount—in the event that S&W were to fail to timely pay any portion of the Settlement. Moreover, because the Receiver is receiving *more* than all of the relief to which she would be entitled from her current allegations against S&W, the provision of a release and consent to an anti-suit injunction in favor of S&W is reasonable. The SEC, which has raised concerns regarding perceived conflicts of interest by S&W, is aware of all terms of the Settlement and consents to them, including the entry of an injunction prohibiting it from asserting any monetary claims against S&W for damage to the receivership estate arising from or relating to those perceived conflicts.

Accordingly, the Settlement is in the best interests of the Receivership Entities, and, respectfully, should be approved.

CONCLUSION

For the reasons set forth herein, the Court should approve the Settlement in its entirety.

Dated: New York, New York
February 6, 2020

Respectfully submitted,

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein

Adam C. Silverstein

A Member of the Firm

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*Attorneys for Melanie L. Cyganowski, as
Receiver*