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February 28, 2020

VIA PACER AND FEDERAL EXPRESS

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 is counsel to Melanie L. Cyganowski, the court-appointed Receiver of the Platinum Partners Credit Opportunities and Liquid Opportunities funds (the "Platinum Funds"). We write to inform the Court of a settlement of litigation that the Receiver has reached, and to confirm that, pursuant to the terms of the Second Amended Order Appointing Receiver (the "Receiver Order") [Dkt. No. 276], the Receiver is authorized to consummate the settlement without further order of the Court.

The settlement pertains to the "confidential arbitration" against "Accounting Firms" that provided audit services to certain of the Receivership Entities referred to and discussed, due to confidentiality constraints, on a limited basis in the Receiver's quarterly status reports to the Court. [See, e.g., Dkt. No. 519, II.C.2; Dkt. No. 495, II.C.2; Dkt. No. 481, II.C.2; also Dkt. No. 522, IV.E] The Arbitration is required to be confidential by the rules of the arbitral forum in which the Platinum Funds and the Accounting Firms agreed to arbitrate. Consistent with such rules, one of the conditions of the settlement is that its terms are and remain confidential.

We respectfully submit that the Receiver Order authorizes the Receiver to consummate the settlement on these terms without further order of the Court. In this Circuit, it is settled law that court orders "must be construed according to general principles of contract law." *City of Hartford v. Chase*, 942 F.2d 130, 134 (2d Cir. 1991). That is, "deference is to be paid to the plain meaning of the language . . . and the normal usage of the terms selected." *Id.* (quoting *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985)).

Here, paragraph 34 (in section IX (entitled "Investigate and Prosecute Claims")) of the Receiver Order, in pertinent part, plainly states: ". . . the Receiver is authorized, empowered and



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directed to investigate, prosecute, defend, intervene in or otherwise participate in, *compromise*, and/or adjust actions in any state, federal or foreign court or *proceeding of any kind* as may in the Receiver's discretion, be advisable or proper to recover and/or conserve Receivership Property." [Dkt. No. 276, ¶34 (emphasis added)] In contrast to other provisions of the Receiver Order, paragraph 34 does *not* expressly require that the Receiver seek Court approval before compromising any such claim. Nor is the Receiver's power in paragraph 34 of the Receiver Order to "compromise" "proceeding[s] of any kind" made subject to any of the limitations on the Receiver's separately described powers in section VIII of the Receiver Order (entitled "Managing Assets") to enter into "*transactions outside of the ordinary course of business*"¹ of the Receivership Entities' orderly wind down *only upon motion and approval of the Court.*" [Dkt. No. 276, ¶30 (emphasis added)]

Because the plain terms of the Receiver Order authorize the Receiver to compromise proceedings of any kind without further order of the Court, the Receiver is preparing to consummate the settlement of the Arbitration—which the Receiver believes is in the best interest of the Receivership estate—confidentially and without further order of the Court.

Unless the Court indicates disagreement with the Receiver's approach as set forth herein, the Receiver intends to consummate the settlement ten days after the filing of this letter.

We thank the Court for its ongoing attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Adam C. Silverstein".

Adam C. Silverstein

¹ The Receiver Order defines "transactions outside of the ordinary course of business" to include "any transaction that involves (i) the expenditure of Receivership cash in excess of \$3 million, or the disposition of the Receivership Estate's interest in Receivership Property in exchange for cash or property of value in excess of \$3 million . . ." [Dkt. No. 276, ¶30] By segregating the treatment of "Assets" in section VIII from the treatment of "Claims" in the separate and distinct section IX, the Receiver Order makes clear that the limitation on the Receiver's power to consummate "transactions outside of the ordinary course of business," requiring prior Court approval, applies to "Assets" *other than* "Claims," as to which no such limitation applies.