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November 23, 2021

VIA ECF AND BY HAND DELIVERY

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 Receivership Entities<sup>1</sup> in the receivership captioned *SEC v. Platinum Mgmt. (NY) LLC, et al.*, No. 1:16-cv-06848-BMC.

On November 12, 2021, undersigned filed Receiver's Omnibus Motion to Confirm Receiver's Determinations as to (1) Claims 282-301 filed by David Levy, (2) Claims 313-322 filed by Wilson Sonsini Goodrich & Rosati, P.C., (3) Claims 156, 329 and 330 filed by Ford O'Brien LLP, and (4) Claims 24 and 227-232 filed by Daniel Small, and (5) Claims 37-38 and 41-42 filed by Richard Schmidt, as Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust, Dkt. Nos. 597-599 (the "***Omnibus Motion***").

Enclosed please find a courtesy copy of an amendment to the Omnibus Motion, in which minor adjustments were made to pages 18-19 of the supporting memoranda of law (Dkt. No. 597-3), which such adjustments apply *only* to claimant Wilson Sonsini Goodrich & Rosati, P.C., and which are made on notice to, and with the agreement of, said claimant. The other claimants, whose claims are the subject of the Omnibus Motion, are not being impacted by the amendment to the Omnibus Motion, but for purposes of providing them with notice of the amendment, their counsel are copied on this letter. For Your Honor's convenience, a

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<sup>1</sup> The Receivership Entities include 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.



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comparison of only the changed pages is enclosed as well. The amendment to the Omnibus Motion will not modify the briefing schedule set forth in the Notice of the Omnibus Motion (Dkt. No. 597).

Thank you for your consideration and continued courtesies.

Respectfully submitted,

/s/ Erik B. Weinick

Erik B. Weinick

Enclosures

cc: Michael S. Sommer, Esq.  
Moe Fodeman, Esq.  
Seth L. Levine, Esq.  
Kevin O'Brien, Esq.  
Adam Ford, Esq.  
Jeff Potts, Esq.

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

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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, :

No. 16-CV-6848 (BMC)

Defendants. :

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**AMENDED MEMORANDUM OF LAW IN SUPPORT OF RECEIVER’S OMNIBUS  
MOTION TO CONFIRM RECEIVER’S DETERMINATIONS AS TO (1) CLAIMS  
282-301 FILED BY DAVID LEVY, (2) CLAIMS 313-322 FILED BY WILSON SONSINI  
GOODRICH & ROSATI, P.C., (3) CLAIMS 156, 329 AND 330 FILED BY FORD  
O’BRIEN LLP, (4) CLAIMS 24 AND 227-232 FILED BY DANIEL SMALL, AND (5)  
CLAIMS 37-38 AND 41-42 FILED RICHARD SCHMIDT, AS TRUSTEE OF THE  
BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC LITIGATION TRUST**

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payment of fees in advising Levy “with respect to investigations being conducted by the United States Attorney’s Offices for the Southern and Eastern Districts of New York and matters related thereto” does not override the indemnification provisions of the agreements nor does it provide an independent basis for reimbursement of Wilson’s fees. (Cyganowski Dec. Ex. 81).

The fact that the Wilson Letter provides that Wilson has been “retained to advise” Levy as the “Client” and that “We have been informed by Mr. Levy that Platinum Partners ... has agreed to pay Mr. Levy’s fees and costs associated with our engagement” demonstrates that the Wilson Letter was nothing more than confirmation and satisfaction of Levy’s advancement and indemnification rights, if any. Indeed, absent satisfaction of the funds’ indemnification responsibilities, the Wilson Letter was an obligation incurred on the eve of the Receivership, that saddled “Platinum Partners” with an over \$8 million obligation for which the funds received no consideration.

The ~~circumstances surrounding~~timing of the Wilson Letter ~~demonstrate that the Wilson Letter was an attempt to circumvent the exceptions to indemnification under the purported applicable governing documents. The Wilson Letter was~~is also significant; it is dated June 16, 2016, which was one week after Huberfeld was charged with honest services fraud based on alleged kickbacks using PPVA’s funds to bribe Norman Seabrook, the former President of the Correction Officer’s Benevolent Association of New York, in exchange for its investment of \$20 million into PPVA. (Cyganowski Dec. ¶ 37). Also around the time of the Wilson Letter, the FBI executed a search warrant at PPVA Portfolio Manager’s offices, which occupied the same physical space as PPCO Portfolio Manager. (Dkt. No. 1, ¶ 175, Rogers Dec. ¶ 9(A)). Further at around the time of the Wilson Letter, Nordlicht announced to investors that PPVA Portfolio Manager decided PPVA would no longer take in new investors, (Cyganowski Dec. ¶ 39), after

which time PPVA's brokerage firms began to declare events of default, made margin calls, demanded additional collateral and sought the immediate unwinding of their relationships with PPVA. (Cyganowski Dec. ¶ 40). Additionally, the Wilson Letter was entered into approximately one month before Bart Schwartz was installed as an Independent Oversight Advisor over the PPVA Portfolio Manager, the PPCO Portfolio Manager, and the PPLO Portfolio Manager. (Cyganowski Dec. ¶ 41). By entering into the Wilson Letter on the eve of the installment of Bart Schwartz, and the commencement of the Receivership, the Wilson Letter was ~~able to evade scrutiny from~~ not reviewed by these independent parties.

The ~~hastiness of the~~ Wilson Letter ~~is demonstrated by the fact that the letter~~ is signed by Nordlicht as "Managing Partner" of "Platinum Partners," even though no such entity exists. (Cyganowski Dec. Ex. 81). Moreover, the Wilson Letter did not follow corporate form because it did not identify the Receivership Entity with which Wilson was contracting. Nordlicht was well aware that in order for the "Platinum Funds" to contract with a third party, Nordlicht would need to sign as a representative for each of the Platinum entities entering into the contract, not just on behalf of the non-existent entity "Platinum Partners." For example, approximately one month after signing the Wilson Letter, Nordlicht signed the letter agreement to retain Guidepost Solutions LLC. Nordlicht signed the agreement three times: once for each of PPVA Portfolio Manager, PPCO Portfolio Manager, and PPLO Portfolio Manager. (Dkt. No. 1-16, p. 11 of 14).

~~The fact that the Wilson Letter was signed by Levy's co-defendant, Nordlicht, demonstrates that the Wilson Letter was an attempt to safeguard the payment of Levy's defense at the expense of investors.~~

The Wilson Letter is distinguishable from the letter at issue in *SEC v. FTC Cap. Mkts., Inc.*, where the court granted an employee's motion for advancement premised upon an

