



of Claim No. 145, (ii) confirming the Receiver's disallowance of Claim No. 145, and (iii) confirming the Receiver's authority to, but not requiring her to, consent to the release of \$4,530,155.68 currently held in escrow pursuant to the Receiver's July 1, 2020 settlement with Senior Health Insurance Company of Pennsylvania in Rehabilitation and Fuzion Analytics, Inc., Dkt. No. 536-2.

**PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be: (i) made in writing; (ii) if by a named party in the above captioned case, electronically filed with the Court; or (iii) if by a non-party, electronically mailed to the Receiver at her e-mail address, [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com), in each case so as to be actually received no later than **May 9, 2022**.

**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: March 18, 2022

**OTTERBOURG P.C.**

By: /s/ Erik B. Weinick  
Erik B. Weinick  
Andrew S. Halpern  
230 Park Avenue  
New York, New York 10169  
Tel.: (212) 661-9100  
Fax: (212) 682-6104  
[eweinick@otterbourg.com](mailto:eweinick@otterbourg.com)  
[ahalpern@otterbourg.com](mailto:ahalpern@otterbourg.com)

*Attorneys for Melanie L. Cyganowski, as  
Receiver*



Fund TE, PPCO Fund, PPCO Fund BL, and PPCO Fund International, collectively, the “**PPCO Funds**,” and, together with PPCO Portfolio Manager, collectively, the “**PPCO Receivership Entities**”), Platinum Liquid Opportunity Management (NY) LLC (“**PPLO Portfolio Manager**”), Platinum Partners Liquid Opportunity Fund (USA) L.P. (“**PPLO Fund US**”), Platinum Partners Liquid Opportunity Master Fund L.P. (“**PPLO Master Fund**,” together with PPLO Fund US, collectively, the “**PPLO Funds**”; together with PPLO Portfolio Manager, collectively, the “**PPLO Receivership Entities**”; and together with the PPCO Receivership Entities, collectively, the “**Receivership Entities**” in this receivership, the “**Receivership**”), and the estate thereof (the “**Receivership Estate**”).<sup>1</sup>

I submit this declaration in support of my motion (the “**Motion**”) for the entry of an order, substantially in the form annexed hereto: (i) permanently enjoining any further prosecution of Claim No. 145, (ii) confirming my disallowance of Claim No. 145, and (iii) confirming my authority to, but not requiring me to, consent to the release of \$4,530,155.68 currently held in escrow pursuant to my July 1, 2020 settlement with Senior Health Insurance Company of Pennsylvania in Rehabilitation (“**SHIP**”) and Fuzion Analytics, Inc. (“**Fuzion**”), Dkt. No. 536-2.

### **PRELIMINARY STATEMENT**

1. Consistent with my responsibilities as Receiver, pursuant to this Court’s December 1, 2020 Order Establishing Claims and Interest Reconciliation and Verification Procedures, Dkt. No. 554 (the “**Claims Process Order**”), I issued my “**Claims Analysis Report**.” See Dkt. Nos. 564 and 564-1. I filed my Claims Analysis Report with this Court, posted it on my website (at [www.PlatinumReceivership.com/index](http://www.PlatinumReceivership.com/index)), and sent it to those who filed claims. In my Claims

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the accompanying *Memorandum of Law in Support of the Receiver’s Motion for an Order (i) Permanently Enjoining Any Prosecution of Claim No. 145, (ii) Confirming the Receiver’s Disallowance of Claim No. 145, and (iii) Confirming the Receiver’s Authority to Consent to the Release of the Indemnity Escrow Amount* (the “**Memorandum**”).

Analysis Report, I disallowed a claim filed by BAM Administrative Services LLC, as Agent (“**BAM**”). I designated this claim as Claim No. 145 (the “**BAM Claim**”).

2. The Claims Process Order required that any claimant who disputed my determinations and wished to object, among other requirements, electronically mail their objection to me and that said objection be “*actually* received not later than 45 days after the Receiver’s mailing of the Claims Analysis Report.” Claims Process Order, 4 (emphasis in original). The effect of failing to follow the procedure set forth in the Claims Process Order would cause my determinations as to their claim to become “final and binding.” *Id.* at 5.

3. More than 45 days have passed since my mailing of the Claims Analysis Report to BAM and I have received no objection from BAM as to my determination of the BAM Claim.

4. Accordingly, I respectfully request that this Court approve the Motion, enter the proposed order substantially in the form attached hereto as **Exhibit A**, and grant such other and further relief as the Court deems just and proper.

### **FACTUAL BACKGROUND**

5. Following my appointment as Receiver, this Court entered the Claims Process Order on December 1, 2020. Section I(B)(i)-(ii) of the Claims Process Order required me to issue the Claims Analysis Report containing my determinations, for each claim, as to whether it should be approved, in what amount, and whether I deemed the claim to be secured by a lien on property of a Receivership Entity.

6. In accordance with the Claims Process Order, I carefully analyzed hundreds of claims asserted by dozens of claimants. I issued my Claims Analysis Report on March 9, 2021.

7. The Claims Process Order defined the procedure by which any claimant who disagreed with my determination as to their claims could file an objection. Specifically, the Claims

Process Order prescribes that:

Objections to the Claims Analysis Report shall (i) be in writing, (ii) state the name and address of the objecting party, the name and address of their counsel, if any, the assigned claim number, and the nature of the Claim of such party, (iii) state with particularity the basis and nature of all objections, and (iv) be electronically mailed to the Receiver, at her email address, platinumreceiver@otterbourg.com, so as to be *actually* received not later than 45 days after the Receiver's mailing of the Claims Analysis Report. Upon the timely service of an Objection, a Claim shall become a "*Disputed Claim*".

Claims Process Order, 4 (emphasis in original).

8. In issuing my Claims Analysis Report, I denied the BAM Claim. Claims Analysis Report, Dkt. No. 564-1, 17 of 40. In so deciding, my team and I undertook a comprehensive review of the BAM Claim. Among the factors I considered in determining the status of the BAM Claim included those factors this Court detailed in its Claims Process Order. These included (1) whether the BAM Claim was properly asserted through a timely filed Proof of Claim; (2) whether the BAM Claim was duplicative of any other Claim asserted against a Receivership Entity; (3) whether the BAM Claim was subject to any offsets or defenses that may be asserted, including with respect to any claimed lien purportedly securing the Claim; and (4) whether other grounds existed for denying the BAM Claim, in whole or in part. *See* Claims Process Order I(A)(i). My determination to deny the BAM Claim reflected the fact that the claim was duplicative of settled claims and my conclusion that under New York Debtor and Creditor Law, the Receivership has no liability for the initial fraudulent transfers that resulted in the creation of the assignments that constituted the purported basis for the BAM Claim. *See* Claims Analysis Report, Dkt. No. 564-1, 17 of 40; *see also* Receiver's First Amended Complaint in *Cyganowski v. Beechwood Re Ltd.*, 18-12018 (S.D.N.Y.), Dkt. No. 83.

9. The settlement agreement entered into on July 1, 2020 between myself and, among others, SHIP (the "*Settlement*"), resolved tens of millions of dollars (in principal amount) of

secured debt allegedly owed by PPCO to a group of secured lenders for which BAM served as agent. However, the Settlement did not address two matters: the first relates to a portion of the debt held by Principal Growth Strategies, LLC (“*PGS*”), which is jointly owned by PPCO and PPVA. This Motion does not address that portion of the purported debt, which I am in the process of resolving with PPVA. The second matter, which is the focus of this Motion, deals with the Settlement’s requirement that within two (2) business days of the Effective Date (as defined by the Settlement), I make a wire transfer of \$4,530,155.68 (the “*Indemnity Escrow Amount*”) to the “*Indemnity Escrow Agent*” (as defined by the Settlement), with the Indemnity Escrow Amount to indemnify me to the extent that certain parties listed on the Debt Registry with respect to putative ownership by (i) PBLA ULICO 2017; (ii) BBIL ULICO 2014; and (iii) OMNIA Ltd. (the “*Putative Lenders*”) of some portion of the debt (the “*Unresolved Portion*”), or their agent, BAM Administrative Services, LLC (“*BAM*”), acting on their behalf, sought payment on the Unresolved Portion.

10. When I agreed to pay SHIP the \$14 million settlement amount, I required that \$4,530,155.68 (the Indemnity Escrow Amount) be held by the “Indemnity Escrow Agent” in order to hold the Receivership Entities and me harmless against all expenses, losses, claims, proofs of claim, damages, suits, proceedings, and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from the purportedly secured debt of PBLA ULICO 2017, the purportedly secured debt of BBIL ULICO 2014 and/or the purportedly secured debt of OMNIA Ltd., up to a maximum of the Indemnity Escrow Amount, which is the total alleged outstanding principal on the secured debt of all three entities. As the Settlement had been entered before this Court’s Claims Process Order and my Claims Analysis Report, the Indemnity Escrow Amount was critical to ensuring the Receivership was able to address objections asserted regarding the

BAM Claim within the parameters of an eventual order establishing procedures by which claims would be determined and objections made.

11. The “*Escrow*,” dated July 31, 2020 (attached hereto as **Exhibit B**), is governed by the terms of the “*Indemnity Escrow Procedures Letter*,” also dated July 31, 2020 (attached hereto as **Exhibit C**), whereby SHIP and I are required to jointly direct the Escrow Agent to release the Indemnity Escrow Amount based on the satisfaction of one of two conditions precedent: (1) a court makes a final determination that the BAM Claim must be paid, in which case the Indemnity Escrow Amount must be distributed to pay the BAM Claim (Indemnity Escrow Procedures Letter, § 7); or (2) an event occurs that triggers the “Release Date,” in which case the Indemnity Escrow Amount must be paid to SHIP (Indemnity Escrow Procedures Letter, § 9). The Release Date is triggered, among other events, by a final, non-appealable order that the BAM Claim is invalid. *See* Indemnity Escrow Procedures Letter Schedule 1 (“Release Date” defined, among other ways, as “the date on which a plan of liquidation treating . . . the entirety of the Proof of Claim filed by BAM Admin, as Agent, as unsecured or invalid is approved by a court of competent jurisdiction in a [final non-appealable order]”).

12. Despite the many claimants who have followed the objection procedures set out in the Claims Process Order, neither BAM nor any other party has submitted an objection, timely or otherwise, to my determination that the BAM Claim be disallowed in full (nor have any of the Putative Lenders filed a proof of claim on their own behalf). Because the effect of failing to follow the procedure set forth in the Claims Process Order would cause my determinations as to their claim to become “final and binding,” (Claims Process Order I(C)(ii)) and BAM has failed to submit a timely objection, or any objection whatsoever, the contingency to which the Indemnity Escrow Amount was partly designed to respond has been avoided. Therefore, I believe that the Indemnity



Escrow Amount should be released to SHIP.

13. However, given the size of the BAM Claim, and its purported status as secured, and because potential claimants who have been silent to date may surface in the future seeking sums in excess of the Escrow, I seek this Court's confirmation of my determination before agreeing to the release of the Indemnity Escrow Amount. I also believe that if BAM, or for that matter, any other claimant is permitted to mount a direct challenge to my decision to disallow the BAM Claim, or if any claimant continues to prosecute the BAM Claim by any other means at some unknown point in the future, any plan of distribution may need to be delayed, altered, or unwound. The relief that I am requesting would provide the finality necessary to enter a plan of distribution without such a threat to the integrity of the plan.

14. I will, in the interest of conclusively resolving the issue, (i) wait an additional 45 days for BAM or others to oppose the requested relief should they choose to do so and (ii) through multiple channels, place BAM and others (such as the Putative Lenders) on notice of the requested relief.

#### **FORM OF NOTICE**

15. I will give notice of this Motion in the following ways:

Direct Notice. Within three (3) business days of filing the Motion, I will provide notice of the Motion to the following recipients:

- a. BAM Administrative Services, LLC by email to their counsel at the following addresses: [ecanter@proskauer.com](mailto:ecanter@proskauer.com), [MHarris@proskauer.com](mailto:MHarris@proskauer.com), [SEilbaum@proskauer.com](mailto:SEilbaum@proskauer.com), and [sholinstat@proskauer.com](mailto:sholinstat@proskauer.com).
- b. Omnia Ltd. (i) by email to its joint provisional liquidators, who have recently

- contacted the Receiver,<sup>2</sup> at the following addresses: [rachelle.frisby@deloitte.com](mailto:rachelle.frisby@deloitte.com), [john.johnston@deloitte.com](mailto:john.johnston@deloitte.com), [cbbcbmomnia@deloitte.com](mailto:cbbcbmomnia@deloitte.com), and [marthinus.dreyer@deloitte.com](mailto:marthinus.dreyer@deloitte.com); and (ii) by email to its counsel in its Chapter 15 proceeding currently pending in the Bankruptcy Court for the Southern District of New York, 20-12793-LGB, at the following addresses: [nfk@stevenslee.com](mailto:nfk@stevenslee.com) and [cp@stevenslee.com](mailto:cp@stevenslee.com).
- c. PB Life and Annuity Co., Ltd. (PBLA), in liquidation, and PB Investment Holdings Ltd., in liquidation (i) by email to their joint provisional liquidators who have recently contacted the Receiver, at the following addresses: [rachelle.frisby@deloitte.com](mailto:rachelle.frisby@deloitte.com), [john.johnston@deloitte.com](mailto:john.johnston@deloitte.com), [cbbcbmomnia@deloitte.com](mailto:cbbcbmomnia@deloitte.com), and [marthinus.dreyer@deloitte.com](mailto:marthinus.dreyer@deloitte.com); (ii) by email to their counsel in its Chapter 15 proceedings currently pending in the Bankruptcy Court for the Southern District of New York, 21-10623-lgb (PBLA) and 20-12791-LGB (PB Investment Holdings Ltd.), at the following addresses: [nfk@stevenslee.com](mailto:nfk@stevenslee.com) and [cp@stevenslee.com](mailto:cp@stevenslee.com).
- d. Wilmington Trust, National Association (as Escrow Agent) at the following addresses: [jnpowers@wilmingtontrust.com](mailto:jnpowers@wilmingtontrust.com) and [dyoung@wilmingtontrust.com](mailto:dyoung@wilmingtontrust.com).
- e. SHIP (i) by email to its general counsel at the following address: [krickard@shipltc.com](mailto:krickard@shipltc.com); and (ii) by email to its outside counsel at the following addresses: [aidan.mccormack@dlapiper.com](mailto:aidan.mccormack@dlapiper.com), [craig.martin@dlapiper.com](mailto:craig.martin@dlapiper.com), and [ellen.dew@dlapiper.com](mailto:ellen.dew@dlapiper.com).

Notice by Publication. Within five (5) business days of filing the Motion, I will: (i) make this Motion and the Proposed BAM Claim Confirmation Order available on my website

---

<sup>2</sup> While I have been contacted by these joint provisional liquidators, it is important to note that they were not appointed until after the Bar Date established in the Bar Date Order, after the deadline for objection to the Settlement.

([www.PlatinumReceivership.com](http://www.PlatinumReceivership.com)); and (ii) will cause a Notice of the Proposed BAM Claim Confirmation Order, attached as **Exhibit D** hereto, to be published in the Wall Street Journal, or other such publication(s) that in my sole and absolute discretion are reasonably calculated to provide notice to BAM. Any claimants will have 45 days following the publication of said Notice of the Proposed BAM Claim Confirmation Order in the Wall Street Journal or any other publication(s) to submit an opposition to the relief requested by the Motion.

### **CONCLUSION**

For the reasons set forth in the Memorandum, I respectfully request that the Motion, including the Proposed BAM Claim Confirmation Order, be approved in substantially the form annexed hereto.

Executed this 18<sup>th</sup> day of March, 2022, at New York, New York.

/s/ Melanie L. Cyganowski

Melanie L. Cyganowski

# **Exhibit A**

## Proposed Order

**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, :

No. 16-CV-6848 (BMC)

Defendants. :

----- X

**[PROPOSED] ORDER (I) PERMANENTLY ENJOINING ANY PROSECUTION OF  
CLAIM NO. 145, (II) CONFIRMING THE RECEIVER’S DISALLOWANCE OF CLAIM  
NO. 145, AND (III) CONFIRMING THE RECEIVER’S AUTHORITY TO CONSENT TO  
THE RELEASE OF THE INDEMNITY ESCROW AMOUNT**

THIS MATTER coming before the Court on the motion by Melanie L. Cyganowski, as 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 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 and the estate thereof (the “*Receivership Estate*”), for entry of an order irrevocably disallowing Claim 145, filed by BAM Administrative Services LLC, as agent, permanently enjoining any person who claims an interest in Claim 145 or any

other property of the Receivership Estate from prosecuting Claim 145, with the exception of any portion of the Claim representing a portion owned by Principal Growth Strategies, LLC, and permitting, but not directing, the Receiver to release the Indemnity Escrow Amount, totaling \$4,530,155.68. The Court has found that due and proper notice of the “*Motion*” [Dkt. No. \_\_\_\_];<sup>1</sup> has been provided; and the Court has considered the Motion and exhibits and other documents filed in support of the Motion; and the Court has found the relief requested in the Motion reasonable and in the best interest of the Receivership Estate; and after due deliberation and for good and sufficient cause shown;

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. All objections not withdrawn or resolved by this Order are overruled in all respects.
3. It is **ORDERED, ADJUDGED, AND DECREED THAT** Claim 145, filed by BAM Administrative Services LLC, as agent, (i) is irrevocably disallowed and any person who claims an interest in Claim 145 or any other property of the Receivership Estate is permanently enjoined from prosecuting Claim 145, with the exception of any portion of Claim No. 145 representing a portion owned by Principal Growth Strategies, LLC; and (ii) the Receiver is permitted, but not directed, to consent to the release of the Indemnity Escrow Amount.
4. All objections to the relief provided for herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the accompanying *Memorandum of Law in Support of the Receiver’s Motion for an Order (i) Permanently Enjoining Any Prosecution of Claim No. 145, (ii) Confirming the Receiver’s Disallowance of Claim No. 145, and (iii) Confirming the Receiver’s Authority to Consent to the Release of the Indemnity Escrow Amount.*

5. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated:

# **Exhibit B**

July 31, 2020 Escrow





## ESCROW AGREEMENT

This Escrow Agreement dated July 31, 2020 (the “**Escrow Agreement**”) is entered into by and among Melanie L. Cyganowski, maintaining an office in New York, New York (solely in the following capacities, the “**Receiver**”), in her capacities as (a) the court appointed receiver for each of (i) Platinum Partners Credit Opportunities Master Fund LP, a Delaware limited partnership, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, a Delaware limited liability company, (iii) Platinum Partners Credit Opportunities Fund LLC, a Delaware limited liability company, (iv) Platinum Partners Credit Opportunities Fund International Ltd., a Cayman Island exempted company, (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., a Cayman Islands exempted company, (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, a Delaware limited liability company, (vii) Platinum Credit Management, L.P., a Delaware limited partnership, (viii) Platinum Liquid Opportunity Management (NY) LLC, a Delaware limited liability company (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., a Delaware limited partnership, and (x) Platinum Partners Liquid Opportunity Master Fund L.P., a Cayman Islands exempted limited partnership (the entities referred to in subsections (i)-(x) above shall be collectively referred to as the “**Receivership Entities**”) and (b) by virtue of same, a representative of each of the PPMF Subsidiaries (as defined in Section 5.1.8 below) (with the Receiver and the Receivership Entities, collectively, the “**PPCO Parties**”), The Senior Health Insurance Company of Pennsylvania, *In Rehabilitation*, a Pennsylvania insurance company that is currently in rehabilitation (“**SHIP**” and, with the Receiver, the “**Parties**” and each a “**Party**”) and Wilmington Trust, National Association.

### RECITALS

**WHEREAS**, paragraph 4 of the “Settlement Agreement” dated as of July 1, 2020, between the Receiver and the SHIP Parties (the “**Settlement Agreement**”), filed as No. 536-2 on the docket of *United States Sec. & Exch. Comm’n v. Platinum Management (NY) LLC et al*, 16 Civ. 06848-BMC, in the United States District Court of the Eastern District of New York, requires the Receiver to pay “the sum of Four Million Five Hundred Thirty Thousand One Hundred Fifty Five Dollars and Sixty Eight Cents (\$4,530,155.68) (the ‘**Indemnity Escrow Amount**’) by wire transfer to the Escrow Agent (defined below) by wire transfer in accordance with wire instructions to be provided by the Escrow Agent on or before one (1) Business Day after the Effective Date”;

**WHEREAS**, paragraph 10(a) of the Settlement Agreement provides that “SHIP shall indemnify and hold the PPCO Parties harmless from all suits, debts, expenses, losses, claims, proofs of claim, damages, suits, proceedings and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and/or the OMNIA Lender of Record Interest, up to a maximum of the Indemnity Escrow Amount”; and

**WHEREAS**, paragraph 10(b) of the Settlement Agreement provides that “[t]he Indemnity Escrow Amount shall be held in escrow by Wilmington Trust, National Association (the ‘Escrow Agent’) in accordance with the terms of a written escrow agreement (the ‘Indemnity Escrow Agreement’),” and “[e]ach of the Receiver, for the PPCO Parties, and SDR [Patrick H. Cantilo as Special Deputy Rehabilitator of SHIP], for the SHIP Parties, agree to negotiate in good faith and execute, on or before the date on which the Approval Order is entered, the Indemnity Escrow Agreement to ensure that the Indemnity Escrow Amount is available to be distributed, and is distributed, in a manner consistent with the indemnity agreement in Paragraph 10(a)”;

**NOW, THEREFORE**, the Parties hereby agree that, in consideration of the mutual promises and covenants contained herein, the Indemnity Escrow Amount (as hereinafter defined) shall be deposited with Escrow Agent for the benefit of the Parties, and Escrow Agent shall hold and distribute the Escrow Property (as hereinafter defined) for the benefit of the Parties in accordance with and subject to the following terms and conditions:

## **ARTICLE 1 ESCROW DEPOSIT**

### 1.1. Receipt of Escrow Property.

(a) Within one (1) Business Day following execution of this Escrow Agreement by each of the Parties, the Receiver shall deposit the sum of \$4,530,155.68 into a United States Dollar denominated account (the “**Escrow Account**”) established by the Escrow Agent. The details of the Escrow Account are set forth below:

Manufacturers & Traders Trust Co.  
ABA# 031100092  
A/C# 142961-000  
A/C Name: SHIP Settlement Escrow  
Attn: Global Capital Markets

(b) Upon the Escrow Agent’s receipt of the funds in the amount set forth in Section 1.1(a), the Escrow Agent shall provide written confirmation thereof to the Receiver and to SHIP. The Escrow Agent will hold the deposit in the Escrow Account, together with all investments thereof and all interest accumulated thereon and proceeds therefrom (the “**Escrow Property**”), in escrow upon the terms and conditions set forth in this Escrow Agreement and shall not disburse funds from the Escrow Account except as provided herein.

### 1.2. Investments.

(a) The Escrow Agent shall invest the Escrow Property in accordance with the written instructions provided to the Escrow Agent and signed by the Parties in such investments (i) as shall from time to time be selected by the Parties and (ii) be investments the Escrow Agent is able to hold. In the absence of written investment

instructions from the Parties, the Escrow Agent shall hold the Escrow Property un-invested, without interest thereon. For the avoidance of doubt, any investment earnings and income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 below. The Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. The Escrow Agent shall not be liable for collection items until such proceeds have been received or the Federal Reserve has given the Escrow Agent credit for the funds.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

1.3. Disbursements.

(a) Subject to Section 1.3(b) hereof, the Escrow Agent is directed to hold the Escrow Property for the benefit of the Parties following the Receiver's deposit thereof into the Escrow Account and following each subsequent deposit (if any) until distributed as herein provided:

(i) If the Receiver and SHIP give Joint Payment Instructions to the Escrow Agent regarding the distribution of all or any portion of the Escrow Property from the Escrow Account to SHIP, to the Receiver or to any third party, the Escrow Agent shall comply with such written instructions and make such distribution or distributions within two (2) Business Days in accordance with such Joint Payment Instructions.

(ii) Except as provided in preceding clause (i), the Escrow Agent shall hold the Escrow Property in the Escrow Account.

(b) In the event that the Escrow Agent makes any payment to any Party pursuant to this Escrow Agreement and for any reason such payment (or any portion thereof) is required to be returned to the Escrow Account or the other Party or is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a receiver, trustee or other party under any bankruptcy or insolvency law, other federal or state law, common law or equitable doctrine, then the recipient shall repay to the Escrow Agent upon written request the amount so paid to it.

(c) Provided that the Escrow Agent shall have complied with Section 3.7 of this Agreement, the Escrow Agent shall be entitled, in its sole discretion, to comply with judgments or orders issued or process entered by any court with respect to the Escrow Property, including without limitation any attachment, levy or garnishment, without any obligation to determine such court's jurisdiction in the matter and in accordance with its normal business practices. Provided that the Escrow Agent shall have complied with Section 3.7 of this Agreement, if the Escrow Agent complies with any such judgment, order or process, then the Escrow Agent shall not be liable to either Party or any other person by reason of such compliance, regardless of the final disposition of any such judgment, order or process.

(d) Each Party understands and agrees that the Escrow Agent shall have no obligation or duty to act upon Joint Payment Instruction delivered to the Escrow Agent for the disbursement of Escrow Property under this Escrow Agreement if such Joint Payment Instruction, is not (i) in writing, (ii) signed by, in the case of the Receiver, the Receiver or any other person designated by the Receiver in Exhibit B-1, or, in the case of SHIP, any individual designated by SHIP on Exhibit B-2 hereto (in each case, each such individual an “**Authorized Representative**” of such Party), and (iii) delivered to, and able to be authenticated by, the Escrow Agent in accordance with Section 1.5.

(e) Upon request, the Escrow Agent will furnish monthly statements to each Party setting forth the activity in the Escrow Account.

(f) The Receiver and SHIP may specify in a Joint Payment Instruction whether the Escrow Property shall be disbursed by way of wire transfer or check. If the Joint Payment Instruction does not so specify the disbursement means, the Escrow Agent may disburse the Escrow Property by any means chosen by the Escrow Agent.

#### 1.4. Escrow Agent’s Reliance on Joint Payment Instructions.

(a) With respect to any Joint Payment Instruction, the Escrow Agent is authorized to follow and rely upon any and all such instructions given to it from time to time if the Escrow Agent believes, in good faith, that such instruction is genuine and to have been signed by an Authorized Representatives of the Parties. The Escrow Agent shall have no duty or obligation to verify that the person who sent the instruction is, in fact, a person duly authorized to give instructions on behalf of a Party, other than to verify that the signature of the Authorized Representative on any such instruction appears to be the signature of such person. Each Party acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent, and that there may be more secure methods of transmitting instructions other than the method selected by such Party. The Escrow Agent shall have no responsibility or liability for any loss which may result from:

(i) any action taken or not taken by the Escrow Agent in good faith reliance on any such signatures or instructions;

(ii) as a result of a Party's reliance upon or use of any particular method of delivering instructions to the Escrow Agent, including the risk of interception of such instruction and misuse by third parties; or

(iii) any officer or Authorized Representative of a Party named in an incumbency certificate, Exhibit B-1 or Exhibit B-2 delivered hereunder prior to actual receipt by the Escrow Agent of a more current incumbency certificate or an updated Exhibit B-1 or Exhibit B-2 and a reasonable time for the Escrow Agent to act upon such updated or more current certificate or Exhibit.

(b) The Receiver may, at any time, update Exhibit B-1 and SHIP may, at any time, update Exhibit B-2 by signing and submitting to the Escrow Agent an updated Exhibit. Any updated Exhibit shall not be effective unless the Escrow Agent countersigns a copy thereof. The Escrow Agent shall be entitled to a reasonable time to act to implement any changes on an updated Exhibit.

#### 1.5. Delivery and Authentication of Joint Payment Instruction.

(a) A Joint Payment Instruction must be delivered to the Escrow Agent by one of the delivery methods set forth in Section 4.3.

(b) Each Party and the Escrow Agent hereby agrees that the following security procedures will be used to verify the authenticity of a Joint Payment Instruction delivered by a Party to the Escrow Agent under this Escrow Agreement:

(i) The Joint Payment Instruction must include the name and signature of the person delivering the Joint Payment Instruction to the Escrow Agent. The Escrow Agent will check that the name and signature of the person identified on the Joint Payment Instruction appears to be the same as the name and signature of an Authorized Representative of such Party.

(ii) The Escrow Agent will make a telephone call to an Authorized Representative of the Party purporting to deliver the Joint Payment Instruction, (which Authorized Representative may be the same as the Authorized Representative who delivered the Joint Payment Instruction) at any telephone number for such Authorized Representative as set forth on Exhibit B-1 or Exhibit B-2, as applicable, to obtain oral confirmation of delivery of the Joint Payment Instruction. If the Joint Payment Instruction is a joint written notice of the Receiver and SHIP, the Escrow Agent shall call back an Authorized Representative of both of those Parties.

(iii) If the Joint Payment Instruction is sent by email to the Escrow Agent, the Escrow Agent also shall review such email address to verify that it appears to have been sent from an email address for an Authorized Representative of such Party as set forth on Exhibit B-1 or Exhibit B-2, as applicable, or from an email address for a person authorized under Exhibit B-1 or Exhibit B-2, as

applicable, to email a Joint Payment Instruction to the Escrow Agent on behalf of the Authorized Representative).

(c) Each Party acknowledges and agrees that given its particular circumstances, including the nature of its business, the size, type and frequency of its instructions, transactions and files, internal procedures and systems, the alternative security procedures offered by the Escrow Agent and the security procedures in general use by other customers and banks similarly situated, the security procedures set forth in this Section 1.5 are a commercially reasonable method of verifying the authenticity of a payment order in a Joint Payment Instruction.

(d) The Escrow Agent is authorized to execute, and each Party expressly agrees to be bound by any payment order in a Joint Payment Instruction issued in its name (and associated funds transfer) (i) that is accepted by the Escrow Agent in accordance with the security procedures set forth in this Section 1.5, whether or not authorized by such Party and/or (ii) that is authorized by or on behalf of such Party or for which such Party is otherwise bound under the law of agency, whether or not the security procedures set forth in this Section 1.5 were followed, and to debit the Escrow Account for the amount of thereof. Notwithstanding anything else, the Escrow Agent shall be deemed to have acted in good faith and without negligence, gross negligence or misconduct if the Escrow Agent is authorized to execute the payment order under this Section 1.5. Any action or inaction taken by the Escrow Agent pursuant to this Section 1.5 prior to the Escrow Agent's actual receipt and acknowledgement of a notice of revocation, cancellation or amendment of a Joint Payment Instruction shall not be affected by such notice of revocation, cancellation or amendment of a Joint Payment Instruction.

(e) The security procedures set forth in this Section 1.5 are intended to verify the authenticity of payment orders provided to the Escrow Agent and are not designed to, and do not, detect errors in the transmission or content of any payment order. The Escrow Agent is not responsible for detecting an error in the payment order, regardless of whether either Party believes the error was apparent, and the Escrow Agent is not liable for any losses arising from any failure to detect an error.

(f) When instructed to credit or pay a Party by both name and a unique numeric or alpha-numeric identifier (*e.g.*, ABA number or account number), the Escrow Agent, and any other banks participating in the funds transfer, may rely solely on the unique identifier, even if it identifies a party different than the party named. Each Party agrees to be bound by the rules of any funds transfer network used in connection with any payment order accepted by the Escrow Agent hereunder.

(g) The Escrow Agent shall not be obliged to make any payment requested under this Escrow Agreement if it is unable to validate the authenticity of the request by the security procedures set forth in this Section 1.5. The Escrow Agent's inability to confirm a payment order may result in a delay or failure to act on that payment order. Notwithstanding anything else in this Escrow Agreement, the Escrow Agent shall not be



required to treat a payment order as having been received until the Escrow Agent has authenticated it pursuant to the security procedures in this Section 1.5 and shall not be liable or responsible for any losses arising in relation to such delay or failure to act.

1.6. Income Tax Allocation and Reporting.

(a) Each Party agrees that, for tax reporting purposes, the Escrow Property shall be deemed to be the property of SHIP and all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by SHIP, whether or not such income was disbursed during such calendar year. Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to prepare or file any Federal or state tax report or return with respect to the Escrow Property, except for the delivery and filing of tax information reporting forms required to be delivered and filed with the Internal Revenue Service. With respect to the preparation, delivery and filing of such required tax information reporting forms and all matters pertaining to the reporting of earnings on the Escrow Property, the Escrow Agent shall be entitled to request and receive written instructions from SHIP, and the Escrow Agent shall be entitled to rely conclusively and without further inquiry on such written instructions. With respect to any payments made under this Escrow Agreement, the Escrow Agent shall not be deemed the payer and shall have no responsibility for performing tax reporting. The Escrow Agent's function of making payments is solely ministerial and upon express direction of the Parties.

(b) Prior to the execution of this Escrow Agreement, or within two days thereafter, the Receiver and SHIP shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Escrow Agent may request. Each Party understands that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Property.

(c) SHIP shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the investment thereof unless such tax, late payment, interest, penalty or other expense was finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.6(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

1.7. Termination. This Agreement shall terminate upon the distribution of all Escrow Property from the Escrow Account, at which time the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 1.3 (Disbursements) and this Escrow Agreement shall be of no further force and effect, except that the

provisions of Sections 1.6 (Tax Allocation and Reporting), 3.1(Indemnification) and 3.2 (Limitation of Liability) hereof shall survive termination.

## **ARTICLE 2**

### **DUTIES OF THE ESCROW AGENT**

2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties expressly and specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to either Party or any other person under this Escrow Agreement or otherwise. The Escrow Agent will not be responsible or liable for the failure of either Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the parties and the Escrow Agent has no duties or obligations with respect thereto. The Escrow Agent acts hereunder as escrow agent only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof. The Escrow Agent shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the Escrow Property, written instructions, or any other documents in connection therewith, and will not be regarded as making nor be required to make, any representations thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement, any other agreement or otherwise.

2.2. Rights of the Escrow Agent. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Escrow Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings. The Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of this Escrow Agreement.



2.3. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all reasonable compensation (reasonable fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees and shall not be responsible for the acts or omissions of such agents, representatives, attorneys, custodians or nominees appointed with due care.

2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

### ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

3.1. Indemnification. SHIP shall indemnify and defend the Escrow Agent and its directors, officers, employees and agents (collectively, the “**Indemnified Parties**”), and hold the Indemnified Parties harmless from any and against all liabilities, losses, actions, suits or proceedings at law or in equity, and any other expenses, fees or charges of any character or nature, (including, without limitation, reasonable attorney's fees and expenses and the costs of enforcement of this Escrow Agreement or any provision thereof), which an Indemnified Party may incur or with which it may be threatened by reason of acting as or on behalf of the Escrow Agent under this Escrow Agreement or arising out of the existence of the Escrow Account, except to the extent the same shall be have been finally adjudicated to have been directly caused by the Escrow Agent's gross negligence or willful misconduct. The terms of this Section shall survive termination of this Escrow Agreement.

3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THIS ESCROW AGREEMENT, THE ESCROW ACCOUNT, THE ESCROW PROPERTY, OR THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION, OR (III) ANY AMOUNT IN EXCESS OF THE VALUE OF THE ESCROW PROPERTY.

3.3. Resignation or Removal. The Escrow Agent may, at any time, resign as escrow agent hereunder by furnishing written notice of its resignation to each Party. At such

time, all fees and expenses to which the Escrow Agent is entitled shall be immediately due and payable to Escrow Agent. The Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent shall be entitled, at its sole discretion and at the expense of SHIP, to petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

3.4. Compensation. (a) The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit C, which compensation shall be paid by SHIP. Such compensation is intended for the Escrow Agent's services as contemplated by this Escrow Agreement. In addition to such compensation, in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and any services or work performed by Escrow Agent in connection with any delay, controversy, litigation or event, and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The terms of this Section 3.4 shall survive termination of this Escrow Agreement.

3.5. Disagreements. Subject to Section 1.3 hereof, if any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, refuse to act until the Escrow Agent (a) receives a final non-appealable order of a court of competent jurisdiction directing delivery of the Escrow Property or (b) receives a written instruction, executed by each of the parties involved in such disagreement or dispute, in a form reasonably acceptable to the Escrow Agent, directing delivery of the Escrow Property. Subject to the Escrow Agent's compliance with Section 3.7 below, the Escrow Agent will be entitled to act on any such written instruction or final, non-appealable order of a court of competent jurisdiction without further question, inquiry or consent. The Escrow Agent may file an

interpleader action in a state or federal court, and upon the filing thereof, and depositing the Escrow Property with such court, the Escrow Agent will be relieved of all liability as to the Escrow Property and will be entitled to recover reasonable and documented out-of-pocket attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. In the event the Escrow Agent receives conflicting instructions hereunder, the Escrow Agent shall be fully protected in refraining from acting until such conflict is resolved to the satisfaction of the Escrow Agent.

3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property (each of the foregoing events, a "**Court Order**"), then, to the extent such disclosure is not prohibited by law or by any such Court Order, and to the extent commercially reasonable, the Escrow Agent shall give SHIP and the Receiver prompt written notice of such Court Order. The Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems necessary to comply with such Court Order. In the event that the Escrow Agent obeys or complies with any such Court Order, and shall have complied with the requirements of this Section, then it shall not be liable to any Party or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

3.8. Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities including but not limited to, computer (hardware or software), payment systems, or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

3.9. Compliance with Legal Orders. The Escrow Agent shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

3.10. No Financial Obligation. The Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and shall not be required to take any action which, in the Escrow Agent's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

#### **ARTICLE 4 MISCELLANEOUS**

4.1. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of each Party and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties and the Escrow Agent shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

4.2. Escheat. Each Party is aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall take all customary actions to prevent the Escrow Property from being presumed abandoned. If the Escrow Agent has taken such customary actions to prevent the Escrow Property from being presumed abandoned, then the Escrow Agent shall have no liability to either Party or any other party, should any or all of the Escrow Property escheat by operation of law.

4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by overnight delivery with a reputable national overnight delivery service, (iii) by mail or by certified mail, return receipt requested, and postage prepaid, or (iv) by electronic transmission; including by way of e-mail (as long as such email is accompanied by a PDF or similar version of the relevant document bearing the signature of an Authorized Representative for the Party sending the notice) with email confirmation of receipt. If any notice is mailed, it shall be deemed given five Business Days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of each Party to notify the Escrow Agent in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to the PPCO Parties:

Otterbourg P.C.  
Attn: Erik B. Weinick, and Adam C. Silverstein, Esqs.  
230 Park Avenue  
New York, New York 10169  
[E-mail: eweinick@otterbourg.com](mailto:eweinick@otterbourg.com)  
[E-mail: asilverstein@otterbourg.com](mailto:asilverstein@otterbourg.com)

-and-

Platinum Partners  
Attn: Trey Rogers, Esq.  
230 Park Avenue, Third Floor West, Suite 323  
New York, New York 10169  
[E-mail: trogers@platinumlp.com](mailto:trogers@platinumlp.com)

If to SHIP:

Senior Health Insurance Company of Pennsylvania  
550 Congressional Blvd., Suite 200  
Carmel, Indiana 46032  
Attn: Kristine Tejano Rickard, General Counsel  
E-mail: [krickard@shipltc.com](mailto:krickard@shipltc.com)

-and-

Aidan M. McCormack  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020-1104  
E-mail: [aidan.mccormack@dlapiper.com](mailto:aidan.mccormack@dlapiper.com).

If to the Escrow Agent:

Wilmington Trust, National Association  
Corporate Client Services  
1100 N. Market Street  
Wilmington, DE 19890  
Attn: Julianne Powers  
Facsimile: (302) 636-4145  
Email address: [jnpowers@wilmingtontrust.com](mailto:jnpowers@wilmingtontrust.com)

4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any laws relating to

choice of laws (whether of the State of New York) that would cause the application of the laws of any jurisdiction other than the State of New York.

4.5. Venue. Each Party and the Escrow Agent hereby consent to the exclusive personal jurisdiction of the United States District Court for the Eastern District of New York in the event of a dispute arising out of or under this Escrow Agreement. Each Party and the Escrow Agent hereby irrevocably waives any objection to the laying of the venue of any suit, action or proceeding and irrevocably submits to the exclusive jurisdiction of such court in such suit, action or proceeding.

4.6. Entire Agreement. This Escrow Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to the Escrow Property and supersedes all prior agreements and understandings, oral or written. If a court of competent jurisdiction declares a provision invalid, it will be ineffective only to the extent of the invalidity, so that the remainder of the provision and Escrow Agreement will continue in full force and effect. In the event of any direct conflict of the terms of this Escrow Agreement with the terms of the Settlement Agreement with respect to the respective rights of the PPCO Parties and SHIP, the terms of the Settlement Agreement shall control and prevail; provided, in no event shall the Escrow Agent be bound by the terms of the Settlement Agreement. This Escrow Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies.

4.7. Amendment. This Escrow Agreement may be amended, modified, supplemented, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent; provided that Exhibit B-1 or Exhibit B-2, as applicable, may be amended at any time in accordance with **Section 1.4**.

4.8. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

4.9. Interpretation. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement. Unless otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Any references to an Exhibit is a reference to an Exhibit of this Escrow Agreement.

4.10. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

4.11. Waiver of Jury Trial. **EACH OF THE PARTIES HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY CLAIM OR COUNTERCLAIM RELATING TO OR ARISING OUT OF THIS ESCROW AGREEMENT.**

4.12. No Third Party Beneficiaries. There shall be no third party beneficiaries of this Escrow Agreement. No person other than SHIP, the PPCO Parties and the Escrow Agent (solely in its capacity as the Escrow Agent) shall have any interest in the Indemnity Escrow Amount, the Escrow Account or the Escrow Property.

## **ARTICLE 5 CERTAIN DEFINITIONS**

5.1.1. “Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are not required or authorized by law to be closed in New York, New York or Chicago, Illinois.

5.1.2. “Joint Payment Instruction” means a joint written instruction executed by an Authorized Representative of each of the Receiver and SHIP directing the Escrow Agent to disburse all or a portion of the Escrow Property.

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

[The remainder of this page left intentionally blank.]



*Melanie Cyganowski* as Receiver

MELANIE CYGANOWSKI, AS  
RECEIVER FOR PLATINUM PARTNERS  
CREDIT OPPORTUNITIES MASTER  
FUND L.P, 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 CREDIT MANAGEMENT,  
L.P., PLATINUM LIQUID  
OPPORTUNITY MANGEMENT (NY)  
LLC, PLATINUM PARTNERS LIQUID  
OPPORTUNITY MASTER FUND L.P.,  
AND PLATINUM PARTNERS LIQUID  
OPPORTUNITY FUND (USA) L.P.

Date:

SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA, IN  
REHABILITATION

By: \_\_\_\_\_  
Name: Patrick H. Cantilo  
Title: Special Deputy Rehabilitator  
Date:

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Escrow Agent


By: \_\_\_\_\_  
Name: Julianne Powers  
Title: Assistant Vice President  
Date:



\_\_\_\_\_  
MELANIE CYGANOWSKI, AS  
RECEIVER FOR PLATINUM PARTNERS  
CREDIT OPPORTUNITIES MASTER  
FUND L.P, 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 CREDIT MANAGEMENT,  
L.P., PLATINUM LIQUID  
OPPORTUNITY MANGEMENT (NY)  
LLC, PLATINUM PARTNERS LIQUID  
OPPORTUNITY MASTER FUND L.P.,  
AND PLATINUM PARTNERS LIQUID  
OPPORTUNITY FUND (USA) L.P.

Date:

SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA, IN  
REHABILITATION

By:   
Name: Patrick H. Cantilo  
Title: Special Deputy Rehabilitator  
Date:

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Escrow Agent

By: \_\_\_\_\_  
Name:  
Title:  
Date:

[SHIP Signature Page to Escrow Agreement]

---

MELANIE CYGANOWSKI, AS  
RECEIVER FOR PLATINUM PARTNERS  
CREDIT OPPORTUNITIES MASTER  
FUND L.P, 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 CREDIT MANAGEMENT,  
L.P., PLATINUM LIQUID  
OPPORTUNITY MANGEMENT (NY)  
LLC, PLATINUM PARTNERS LIQUID  
OPPORTUNITY MASTER FUND L.P.,  
AND PLATINUM PARTNERS LIQUID  
OPPORTUNITY FUND (USA) L.P.

Date:

SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA, IN  
REHABILITATION

By: \_\_\_\_\_  
Name: Patrick H. Cantilo  
Title: Special Deputy Rehabilitator  
Date:

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Escrow Agent

By: J Powers  
Name: Julianne Powers  
Title: Assistant Vice President  
Date:

**EXHIBIT A**

**Form of Joint Payment Instruction**

[date]  
 Wilmington Trust, National Association  
 [Corporate Client Services  
 1100 N. Market Street  
 Wilmington, DE 19890]  
 Attention: [name]

**Re: Escrow Account No.: [##], [escrow account name]**

Ladies and Gentlemen:

Reference is made to the Escrow Agreement, dated as of July 31, 2020 entered into by and among MELANIE L. CYGANOWSKI (solely in the following capacities, the “**Receiver**”), in her capacity as (a) the court appointed receiver for each of (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 Opportunity 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 Section shall be collectively referred to as the “**Receivership Entities**”) and (b) by virtue of same, a representative of each of the “**PPMF Subsidiaries**” (as defined therein) (with the Receiver and the Receivership Entities, collectively, the “**PPCO Parties**”), SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, IN REHABILITATION, an insurance company organized under Pennsylvania law that is currently in rehabilitation, with its principal place of business in Carmel, Indiana (“**SHIP**,” and together with the PPCO Parties, each a “**Party**” and collectively, the “**Parties**”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as escrow agent (the “**Escrow Agent**”). Capitalized terms defined in the Escrow Agreement shall have the same meanings when used herein. This letter is a Joint Payment Instruction referred to in Section 5.1.2 of the Escrow Agreement.

The Receiver and SHIP hereby jointly instruct the Escrow Agent to release the funds in the Escrow Account in the amounts, and to the account(s), as follows:

Amount:	
Beneficiary Bank Name:	
Beneficiary Bank Address Line 1:	
Beneficiary Bank Address Line 2:	

Beneficiary Bank Address Line 3:	
ABA#:	
SWIFT#:	
Beneficiary Account Title:	
Beneficiary Account No./IBAN:	
Beneficiary Address Line 1:	
Beneficiary Address Line 2:	
Beneficiary Address Line 3:	
Additional Information:	

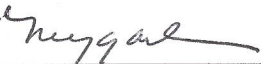
\_\_\_\_\_  
 Melanie L. Cyganowski, as receiver of Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners Credit Opportunities Fund International (A) Ltd., Platinum Partners Credit Opportunity 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.  
 Date:

Senior Health Insurance Company of Pennsylvania,  
 In Rehabilitation

By: \_\_\_\_\_  
 Name: Patrick H. Cantilo  
 Title: Special Deputy Rehabilitator  
 Date:

**EXHIBIT B****EXHIBIT B-1****CERTIFICATE AS TO AUTHORIZED SIGNATURES  
OF PPCO PARTIES**

Melanie L. Cyganowski (the “Receiver”), as the court appointed receiver for each of 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 Opportunity 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. hereby designates each of the following persons as her Authorized Representative for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account established under this Escrow Agreement to which this Exhibit B-1 is attached, on behalf of the Receiver.

<b>Name (print):</b>	Melanie L. Cyganowski
<b>Specimen Signature:</b>	
<b>Title:</b>	Receiver
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: (212) 661-9100 Cell: (917) 496-3670 Home: (631) 689-0197 Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: mcyganowski@otterbourg.com Email 2:
<b>Facsimile:</b>	

<b>Name (print):</b>	
<b>Specimen Signature:</b>	
<b>Title:</b>	
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: Cell: Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: Email 2:
<b>Facsimile:</b>	

**Execution Version**

<b>Name (print):</b>	
<b>Specimen Signature:</b>	
<b>Title:</b>	
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: Cell: Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: Email 2:
<b>Facsimile:</b>	

**COMPLETE BELOW TO UPDATE EXHIBIT B-1**

If the Receiver wishes to change the names or details of any of her Authorized Representatives, the Receiver must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-1 with such changes. Any updated Exhibit B-1 shall be effective once signed by the Receiver and Escrow Agent and shall entirely supersede and replace any prior Exhibit B-1 attached to this Escrow Agreement or submitted to Escrow Agent.

Melanie L. Cyganowski, as the court appointed receiver for each of 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 Opportunity 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. hereby designates each of the following persons as her Authorized Representative for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account established under this Escrow Agreement to which this Exhibit B-1 is attached, on behalf of the Receiver.

By: \_\_\_\_\_  
 Name:  
 Title:  
 Date:

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: \_\_\_\_\_



**Execution Version**

Name:  
Title:  
Date:

---

*Internal Use Only:*

- Updated details of Authorized Representatives completed in full
- Signed by a representative of the Receiver per relevant board resolutions/certificate of incumbency on file (if relevant).
- Call-back performed to the Receiver to confirm authenticity of updated Exhibit B-1:

Person Called: \_\_\_\_\_ Date of Call: \_\_\_\_\_ Time of Call: \_\_\_ am/pm

Reviewed by (name): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT B-2**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES  
OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, IN  
REHABILITATION**

Senior Health Insurance Company of Pennsylvania, *in Rehabilitation* (“SHIP”), hereby designates each of the following persons as its Authorized Representative for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account[s] established under this Escrow Agreement to which this Exhibit B-2 is attached, on behalf of SHIP.

<b>Name (print):</b>	Patrick H. Cantilo
<b>Specimen Signature:</b>	<i>Patrick H. Cantilo</i>
<b>Title:</b>	Special Deputy Rehabilitator
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: 1-512-478-6000 Cell: 512-415-9611 Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: phcantilo@cb-firm.com Email 2:
<b>Facsimile:</b>	1-512-404-6550

<b>Name (print):</b>	
<b>Specimen Signature:</b>	
<b>Title:</b>	
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: Cell: Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: Email 2:
<b>Facsimile:</b>	

<b>Name (print):</b>	
----------------------	--





**EXHIBIT B-2**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES  
OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, IN  
REHABILITATION**

Senior Health Insurance Company of Pennsylvania, *in Rehabilitation* (“SHIP”), hereby designates each of the following persons as its Authorized Representative for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account[s] established under this Escrow Agreement to which this Exhibit B-2 is attached, on behalf of SHIP.

<b>Name (print):</b>	Patrick H. Cantilo
<b>Specimen Signature:</b>	
<b>Title:</b>	Special Deputy Rehabilitator
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: 1-512-478-6000 Cell: Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: phcantilo@cb-firm.com Email 2:
<b>Facsimile:</b>	1-512-404-6550

<b>Name (print):</b>	William A. Ruddell
<b>Specimen Signature:</b>	
<b>Title:</b>	Senior Treasury Analyst
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: 317-566-7545 Cell: 317-654-5549 Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: bruddell@shipltc.com Email 2: treasury@shipltc.com
<b>Facsimile:</b>	317-566-7545

<b>Name (print):</b>	Ginger S. Darrough
----------------------	--------------------



<b>Specimen Signature:</b>	
<b>Title:</b>	Chief Financial Officer
<b>Telephone Number (required):</b> <i>If more than one, list all</i>	Office: Cell: 317-413-6234 Home: Other:
<b>E-mail (required):</b> <i>If more than one, list all</i>	Email 1: gdarrough@shipltc.com Email 2:
<b>Facsimile:</b>	

**COMPLETE BELOW TO UPDATE EXHIBIT B-2**

If Senior Health Insurance Company of Pennsylvania, In Rehabilitation, wishes to change the names or details of any of its Authorized Representatives, it must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-2 with such changes. Any updated Exhibit B-2 shall be effective once signed by SHIP and Escrow Agent and shall entirely supersede and replace any prior Exhibit B-2 attached to this Escrow Agreement or submitted to Escrow Agent.

**SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, IN REHABILITATION**

By: \_\_\_\_\_  
 Name:  
 Title:  
 Date:

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
 Name:  
 Title:  
 Date:

**Execution Version**

<i>If more than one, list all</i>	Email 2:
<b>Facsimile:</b>	

**COMPLETE BELOW TO UPDATE EXHIBIT B-2**

If Senior Health Insurance Company of Pennsylvania wishes to change the names or details of any of its Authorized Representatives, it must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-2 with such changes. Any updated Exhibit B-2 shall be effective once signed by SHIP and Escrow Agent and shall entirely supersede and replace any prior Exhibit B-2 attached to this Escrow Agreement or submitted to Escrow Agent.

**SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA**

By: \_\_\_\_\_  
 Name:  
 Title:  
 Date:

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
 Name:  
 Title:  
 Date:

*Internal Use Only:*

- Updated details of Authorized Representatives completed in full
- Signed by a representative of SHIP per relevant board resolutions/certificate of incumbency on file (if relevant).
- Call-back performed to SHIP to confirm authenticity of updated Exhibit B-2:

Person Called: \_\_\_\_\_ Date of Call: \_\_\_\_\_ Time of Call: \_\_\_am/pm

Reviewed by (name): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT C**

**Fees of Escrow Agent**

**Acceptance Fee: \$0 (WAIVED)**

Initial Fees as they relate to Wilmington Trust, N.A. acting in the capacity of Escrow Agent – includes review of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account(s). **Acceptance Fee payable prior to, or within one Business Day after, the Escrow Agreement is executed by all parties.**

**Escrow Agent Administration Fee: \$0 (WAIVED)**

For ordinary administrative services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. This fee shall be payable [**monthly/annually/other(fill in)**].

*Wilmington Trust, N.A.'s fees are based on the following assumptions:*

- Number of Escrow Accounts to be established: One (1)
- Estimated Term of Escrow Agreement: TBD
- Investment of Escrow Property in: TBD

**Out-of-Pocket Expenses:**

**Billed At Cost**

# **Exhibit C**

July 31, 2020 Indemnity  
Escrow Procedures Letter

**Execution Version**

Senior Health Insurance Company of Pennsylvania  
550 Congressional Blvd., Suite 200  
Carmel, Indiana 46032

July 31, 2020

Melanie L. Cyganowski, as Receiver  
c/o Otterbourg P.C.  
230 Park Avenue  
New York, New York 10169  
Attention: Erik B. Weinick, Esquire  
Email: eweinick@otterbourg.com

Re: Indemnity Escrow Procedures

Dear Melanie:

This letter agreement is made with reference to (A) that certain Settlement Agreement dated July 1, 2020 (the “**Settlement Agreement**”) by and among Melanie L. Cyganowski, as Receiver (in such capacity the “**Receiver**”) for (1) Platinum Partners Credit Opportunities Master Fund LP, (2) Platinum Partners Credit Opportunities Fund (TE) LLC, (3) Platinum Partners Credit Opportunities Fund LLC, (4) Platinum Partners Credit Opportunities Fund International Ltd., (5) Platinum Partners Credit Opportunities Fund International (A) Ltd., (6) Platinum Partners Credit Opportunity Fund (BL) LLC, (7) Platinum Credit Management LP, (8) Platinum Liquid Opportunity Management (NY) LLC, (9) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (10) Platinum Partners Liquid Opportunity Master Fund L.P. (the “**Receivership Entities**”), Senior Health Insurance Company of Pennsylvania, *In Rehabilitation* (“**SHIP**”), and Fuzion Analytics, Inc. (“**Fuzion**”), and (B) that certain Escrow Agreement dated July 31, 2020, by and among the Receiver, SHIP and Wilmington Trust, National Association (the “**Escrow Agreement**”), to confirm our agreement regarding the process that the Receiver and SHIP will follow with respect to distributions by the Indemnity Escrow Agent, as defined in Paragraph 10 of the Settlement Agreement which states as follows:

**“10. Indemnification/Escrow.**

- a. SHIP shall indemnify and hold the PPCO Parties harmless from all suits, debts, expenses, losses, claims, proofs of claim, damages, suits, proceedings and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and/or the OMNIA Lender of Record Interest, up to a maximum of the Indemnity Escrow Amount.
- b. The Indemnity Escrow Amount shall be held in escrow by Wilmington Trust, National Association (the “**Indemnity Escrow Agent**”) in accordance with the terms of a written escrow agreement (the “**Indemnity Escrow Agreement**”). Each of the Receiver, for the PPCO Parties, and the SDR, for the SHIP Parties, agree to negotiate in good faith and execute on or before the Approval Order is entered, the Indemnity Escrow Agreement to ensure that the Indemnity Escrow Amount is available to be distributed, and is distributed, in a manner consistent with the indemnity agreement in Paragraph 10(a).”

The PPCO Parties and the SHIP Parties have concluded that the matters addressed in this letter agreement would be better addressed between them in this letter agreement rather than addressing them in the body of the Indemnity Escrow Agreement. Nothing in this letter agreement is intended to, nor shall, amend or modify the Settlement Agreement.

Unless otherwise expressly indicated herein, including Schedule 1 attached hereto, capitalized terms that are used herein but not defined herein shall have the meanings ascribed to such terms in the Settlement Agreement or in the Escrow Agreement.

Accordingly, we confirm the following agreement:

1. Existing Claim. The Parties acknowledge that the Creditor Proof of Claim filed by BAM Administrative Services LLC, as Agent, against Platinum Partners Credit Opportunities Master Fund L.P., which was assigned claim number PTM 145 (the “**BAM Admin Proof of Claim**”), asserts claims against the Receivership Entities with respect to, among other things, the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and the OMNIA Lender of Record Interest and that the BAM Admin Proof of Claim, therefore, constitutes a Claim (as defined below) with respect to the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and the OMNIA Lender of Record Interest. As used hereinbelow, the term “**BAM Claim**” means the BAM Admin Proof of Claim only with respect to the PBLA ULICO 2017



Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and the OMNIA Lender of Record Interest.

2. Notice. In the event that the Receiver is notified that any person has asserted or threatened to assert a claim, other than the BAM Claim (of which SHIP acknowledges having notice), as to which the Receiver is entitled to indemnification pursuant to Paragraph 10.a. of the Settlement Agreement (a “**Claim**”) the Receiver shall give SHIP prompt written notice thereof.
3. Disposition of Claims. The Receiver shall use best efforts to confer, communicate, consult, cooperate, and collaborate, reasonably (in light of timing and other considerations) and in good faith, with SHIP regarding the defense, negotiation, dispute resolution, settlement, or other disposition of, or challenge, objection or response to, the BAM Claim or any other Claim. The Receiver shall not settle the BAM Claim or any other Claim with funds from the Escrow Account without first obtaining the written consent of SHIP, which consent shall not be unreasonably withheld. Notwithstanding the foregoing or anything in this letter agreement to the contrary, nothing in this letter agreement is intended to, nor shall, limit the Receiver’s authority pursuant to the orders of the PPCO Receivership Court to act on behalf of the Receivership Entities.
4. Information Sharing. The Receiver agrees reasonably to share with SHIP information or documentation concerning the defense, negotiation, dispute resolution, settlement, or other disposition of, or objection, challenge or response to, the BAM Claim or any other Claim. The Receiver shall share such information with SHIP other than any privileged communications and information subject to a written agreement to maintain the confidentiality of such information unless such information can be shared without breaching such confidentiality agreement. In furtherance of this paragraph, the Receiver and SHIP each acknowledge that they have a common interest in the Receiver’s objection, challenge or response to or defense of the BAM Claim or any other Claim and in furtherance of that common interest intend for any communications between them or their counsel related to the BAM Claim or any other Claim to be subject to a common interest privilege to the fullest extent of the law.
5. Reasonable Attorneys’ Fees and Expenses.
  - a. The Receiver agrees that SHIP’s future reasonable attorneys’ fees and expenses in monitoring, conferring with, communicating with, consulting with, cooperating, and collaborating with Receiver in responding to, defending, settling or otherwise disposing of the BAM Claim or any other Claim may be reimbursed from the Escrow Account.



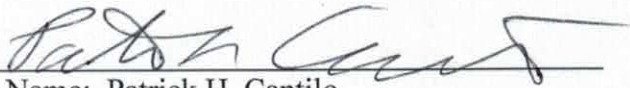
- b. The Receiver will discuss with SHIP appropriate budgets for future fees, expenses, and costs that she expects to incur and to be paid from the Escrow Account as part of any objection, challenge or response to or defense of the BAM Claim or any other Claim.
    - c. (i) SHIP agrees to execute and deliver Joint Payment Instructions to the Escrow Agent, as requested, for the distribution of funds from the Escrow Account to pay future reasonable attorneys' fees and expenses incurred by the Receiver in defending, negotiating, resolving, settling, or otherwise disposing of, or responding to, the BAM Claim or any other Claim, and (ii) the Receiver agrees to execute and deliver Joint Payment Instructions to the Escrow Agent, as requested, for the distribution of funds from the Escrow Account to pay future reasonable attorneys' fees and expenses incurred by SHIP in monitoring, conferring with, communicating with, consulting with, cooperating, and collaborating with the Receiver in responding to, defending, settling or otherwise disposing of the BAM Claim or any other Claim.
6. Payments on Settled Claims. If the Receiver, with SHIP's written consent in accordance with the provisions of paragraph 3 hereof, agrees to a settlement of the BAM Claim or any other Claim, the Receiver and SHIP shall execute and deliver to the Escrow Agent Joint Payment Instructions instructing the Escrow Agent to distribute funds from the Escrow Account for payment thereof.
7. Payments on Final Determination. If a court makes a Final Determination that requires payment of the BAM Claim or any other Claim, SHIP and the Receiver shall execute and deliver to the Escrow Agent Joint Payment Instructions instructing the Escrow Agent to distribute funds from the Escrow Account for payment thereof.
8. Dispute Resolution. If the Receiver and SHIP have a good faith dispute regarding any matter under this letter agreement that results in an impasse with respect to the release of any funds from the Escrow Account, then that dispute may be submitted to the PPCO Receivership Court for resolution.
9. Release Date. Within three (3) Business Days after the Release Date (as defined on Schedule 1 hereto), the Receiver and SHIP shall execute and deliver to the Escrow Agent under the Escrow Agreement Joint Payment Instructions instructing the Escrow Agent to distribute all funds and other Escrow Property in the Escrow Account SHIP.
10. No Third Party Beneficiaries. There shall be no third party beneficiaries of this letter agreement.

Please sign where indicated on the signature page to this letter agreement to confirm the Receiver's agreement to the terms set forth above.


[The signature page follows. The remainder of this page is blank.]

Sincerely,

SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, *In Rehabilitation*, a Pennsylvania domiciled insurance company placed in rehabilitation by order of the Commonwealth Court of Pennsylvania on January 29, 2020

By:   
Name: Patrick H. Cantilo  
Title: Special Deputy Rehabilitator

FUZION ANALYTICS, INC.

By:   
Name: Patrick H. Cantilo  
Title: Authorized Representative

The undersigned Receiver agrees to the terms set forth in the foregoing letter agreement:

---

Melanie L. Cyganowski, as Receiver for each of the Receivership Entities

[Signature Page to Letter Agreement Re: Indemnity Escrow Procedures]

Sincerely,

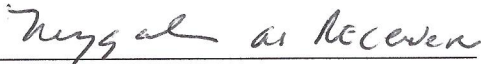
SENIOR HEALTH INSURANCE COMPANY OF  
PENNSYLVANIA, *In Rehabilitation*, a  
Pennsylvania domiciled insurance company placed  
in rehabilitation by order of the Commonwealth  
Court of Pennsylvania on January 29, 2020

By: \_\_\_\_\_  
Name: Patrick H. Cantilo  
Title: Special Deputy Rehabilitator

FUZION ANALYTICS, INC.

By: \_\_\_\_\_  
Name: Patrick H. Cantilo  
Title: Authorized Representative

The undersigned Receiver agrees  
to the terms set forth in the foregoing  
letter agreement:

  
\_\_\_\_\_  
Melanie L. Cyganowski, as Receiver for  
each of the Receivership Entities

[Signature Page to Letter Agreement Re: Indemnity Escrow Procedures]

## **SCHEDULE 1**

**“Final Determination”** means a final non-appealable order of any court of competent jurisdiction which may be issued, together with (x) a certificate of the prevailing party to the effect that such order is final and non-appealable and (y) if applicable, the written payment instructions of the prevailing party to effectuate such order.

**“Joint Payment Instruction”** means a joint written instruction executed by an Authorized Representative (as defined in the Escrow Agreement) of each of the Receiver and SHIP directing the Escrow Agent (as defined in the Escrow Agreement) to disburse all or a portion of the Escrow Property (as defined in the Escrow Agreement), as applicable, in the manner set forth therein. A Form of Joint Payment Instruction is attached to the Escrow Agreement as Exhibit A to the Escrow Agreement.

**“Release Date”** means the date that is three (3) Business Days after the earliest of the following dates:

- (a) the date on which the Receiver (i) certifies in writing to SHIP and the Escrow Agent that the Receiver fully and finally releases and waives any and all claims by the PPCO Parties to the Escrow Property, and (ii) delivers such certification to the Escrow Agent;
- (b) the date on which the Parties deliver to the Escrow Agent Joint Payment Instruction directing the Escrow Agent to disburse all Escrow Property in accordance with the Parties’ written instructions therein; and
- (c) the date that is the earliest of (i) the date on which BAM Admin, as Agent, releases in writing any and all security interests in any and all assets of the PPCO Parties granted under the MSA and/or A&R MSA and/or withdraws with prejudice in its entirety the Proof of Claim BAM Admin, as Agent, filed; (ii) the date on which a plan of liquidation treating each of the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and the OMNIA Lender of Record Interest, or the entirety of the Proof of Claim filed by BAM Admin, as Agent, as unsecured or invalid is approved by a court of competent jurisdiction in a Final Determination; (iii) the date on which a court of competent jurisdiction issues a Final Determination determining that each of the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and the OMNIA Lender of Record Interest is unsecured or invalid.

# **Exhibit D**

## Notice of Proposed Order

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)

**NOTICE OF MOTION FOR AN ORDER  
(I) PERMANENTLY ENJOINING ANY PROSECUTION OF CLAIM NO. 145, (II)  
CONFIRMING THE RECEIVER’S DISALLOWANCE OF CLAIM NO. 145, AND (III)  
CONFIRMING THE RECEIVER’S AUTHORITY TO CONSENT TO THE RELEASE  
OF THE INDEMNITY ESCROW AMOUNT**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On March 18, 2022, Melanie L. Cyganowski, as Receiver for the Receivership Entities<sup>1</sup> in the above-captioned action, has moved the United States District Court for the Eastern District of New York for entry of an order permanently enjoining any prosecution of Claim No. 145 against the Receivership Entities, submitted by BAM Administrative Services, LLC as agent for (i) PBLA ULICO 2017, (ii) BBIL ULICO 2014, and (iii) OMNIA Ltd; confirming the Receiver’s disallowance of Claim No. 145; and authorizing the Receiver to release \$4,530,155.68, currently held in escrow, to Senior Health Insurance Company of Pennsylvania, in Rehabilitation.

---

<sup>1</sup> The “*Receivership Entities*” are Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund L.P., 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.

**If you do not file an opposition to the motion in the above-captioned action by May 9, 2022, you may be irrevocably disallowed from prosecuting the Receiver's disallowance of this claim.**

Dated: March 18, 2022

**OTTERBOURG P.C.**

By: /s/ Erik B. Weinick  
Erik B. Weinick  
Andrew S. Halpern  
230 Park Avenue  
New York, New York 10169  
Tel.: (212) 661-9100  
Fax: (212) 682-6104  
[eweinick@otterbourg.com](mailto:eweinick@otterbourg.com)  
[ahalpern@otterbourg.com](mailto:ahalpern@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)

**MEMORANDUM OF LAW**  
**IN SUPPORT OF THE RECEIVER’S MOTION FOR AN ORDER (I) PERMANENTLY**  
**ENJOINING ANY PROSECUTION OF CLAIM NO. 145, (II) CONFIRMING THE**  
**RECEIVER’S DISALLOWANCE OF CLAIM NO. 145, AND (III) CONFIRMING**  
**THE RECEIVER’S AUTHORITY TO CONSENT TO THE RELEASE**  
**OF THE INDEMNITY ESCROW AMOUNT**

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

*Attorneys for Melanie L. Cyganowski, as Receiver*

Of Counsel:

Erik B. Weinick  
 Andrew S. Halpern

**TABLE OF CONTENTS**

	<u>Page</u>
<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>PRELIMINARY STATEMENT .....</b>	<b>2</b>
<b>FACTUAL BACKGROUND.....</b>	<b>5</b>
1. The Relevant Parties .....	5
2. The Settlement .....	7
3. The Claims Verification Procedures Order and the Claims Analysis Report.....	9
<b>ARGUMENT.....</b>	<b>11</b>
1. BAM, as Agent, has not Objected to the Receiver’s Disallowance of the BAM Claim.....	12
2. The Receiver’s Approach to the BAM Claim Is Consistent with Her Actions in This Case .....	13
3. An Extension of Time to Object, Though Not Required, Reinforces the Fairness of the Requested Relief .....	13
<b>CONCLUSION .....</b>	<b>18</b>

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b>Cases</b>	
<i>S.E.C. v. Elliott</i> , 953 F.2d 1560, 1566 (11th Cir. 1992).....	14
<i>S.E.C. v. Hardy</i> , 803 F.2d 1034, 1038 (9th Cir. 1986) .....	14
<i>S.E.C. v. Safety Finance Service, Inc.</i> , 674 F.2d 368, 372 (5th Cir. 1982).....	14
<i>Welch v. United Parcel Serv., Inc.</i> , 871 F. Supp. 2d 164, 199 (E.D.N.Y. 2012).....	14

Melanie L. Cyganowski, the duly appointed Receiver (the “**Receiver**”) for Platinum Credit Management, L.P. (“**PPCO Portfolio Manager**”), Platinum Partners Credit Opportunities Master Fund LP (“**PPCO Master Fund**”), Platinum Partners Credit Opportunities Fund (TE) LLC (“**PPCO Fund TE**”), Platinum Partners Credit Opportunities Fund LLC (“**PPCO Fund**”), Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Fund BL**”), Platinum Partners Credit Opportunities Fund International Ltd (“**PPCO Fund International**”), Platinum Partners Credit Opportunities Fund International (A) Ltd (“**PPCO Fund International A**” together with PPCO Master Fund, PPCO Fund TE, PPCO Fund, PPCO Fund BL, and PPCO Fund International, collectively, the “**PPCO Funds**,” and, together with PPCO Portfolio Manager, collectively, the “**PPCO Receivership Entities**”), Platinum Liquid Opportunity Management (NY) LLC (“**PPLO Portfolio Manager**”), Platinum Partners Liquid Opportunity Fund (USA) L.P. (“**PPLO Fund US**”), Platinum Partners Liquid Opportunity Master Fund L.P. (“**PPLO Master Fund**,” together with PPLO Fund US, collectively, the “**PPLO Funds**”; together with PPLO Portfolio Manager, collectively, the “**PPLO Receivership Entities**”; and together with the PPCO Receivership Entities, collectively, the “**Receivership Entities**” in this receivership, the “**Receivership**”), by and through her undersigned counsel, respectfully submits this memorandum of law in support of her motion (the “**Motion**”)<sup>1</sup> for the entry of an order (i) permanently enjoining any further prosecution of Claim No. 145, (ii) confirming the Receiver’s disallowance of Claim No. 145, and (iii) confirming the Receiver’s authority to, but not requiring her to, consent to the release of \$4,530,155.68 currently held in escrow (the “**Indemnity Escrow Amount**”) pursuant to the

---

<sup>1</sup> All capitalized terms not defined herein shall have the meanings ascribed by the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Receiver’s Motion for an Order (i) Permanently Enjoining Any Prosecution of Claim No. 145, (ii) Confirming the Receiver’s Disallowance of Claim No. 145, and (iii) Confirming the Receiver’s Authority to Consent to the Release of the Indemnity Escrow Amount filed contemporaneous herewith (the “**Cyganowski Decl.**”).

Receiver's July 1, 2020 settlement with Senior Health Insurance Company of Pennsylvania in Rehabilitation ("**SHIP**") and Fuzion Analytics, Inc. ("**Fuzion**"), Dkt. No. 536-2 (the "**Settlement**").

### **PRELIMINARY STATEMENT**

On July 20, 2020, this Court approved the Settlement and a separate settlement with certain other parties, which collectively resolved, in substantial part, a contentious litigation commenced by the Receiver against SHIP, Fuzion and certain other parties, in which the Receiver, *inter alia*, (i) challenged, as fraudulent conveyances under the New York Debtor and Creditor Law certain transactions in which the chief investment officer of PPCO Portfolio Manager caused PPCO Master Fund to issue nearly \$70 million of purported secured debt in order to finance its purchase or discharge of certain worthless or grossly overvalued loans to three distressed companies, and (ii) asserted certain other claims for damages. *See* Receiver's First Amended Complaint in *Cyganowski v. Beechwood Re Ltd.*, 18-12018 (S.D.N.Y.), Dkt. No. 83, ¶¶ 221-258, 341-426. The Settlement resolved the Receiver's claims regarding a substantial portion of the purportedly secured debt, but did not address two matters. The first matter relates to a portion of the debt held by Principal Growth Strategies, LLC ("**PGS**"), which is jointly owned by PPCO and PPVA. This Motion does not address that portion of the purported debt, which the Receiver is in the process of resolving with PPVA. Cyganowski Decl. ¶ 9. The second matter, which is the focus of this Motion, deals with the Settlement's requirement that, within two (2) business days of the Effective Date (as defined by the Settlement), the Receiver make a wire transfer of \$4,530,155.68 (the "**Indemnity Escrow Amount**") to the "**Indemnity Escrow Agent**" (as defined by the Settlement), with the Indemnity Escrow Amount to serve as indemnification by SHIP of the Receiver to the

extent that certain parties listed on the Debt Registry<sup>2</sup> with respect to putative ownership by (i) PBLA ULICO 2017; (ii) BBIL ULICO 2014; and (iii) OMNIA Ltd. (the “*Putative Lenders*”) of some portion of the debt (the “*Unresolved Portion*”), or their agent, BAM Administrative Services, LLC (“*BAM*”), acting on their behalf, sought payment on the Unresolved Portion.

The Indemnity Escrow Amount is governed by a separate escrow agreement dated July 31, 2020 (the “*Escrow*,” Cyganowski Decl., Ex. B) by and among Melanie L. Cyganowski, in her capacity as the Receiver, Patrick H. Cantilo, in his capacity as Special Deputy Rehabilitator for SHIP, and by Wilmington Trust, National Association, as Escrow Agent. *Id.*

The Escrow acknowledged, by reference to the Settlement, SHIP’s agreement to indemnify and hold harmless the Receivership Entities and certain other entities (collectively, the “*PCO Parties*”) “from all suits . . . claims, proofs of claim . . . and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from the PBLA ULICO 2017 Lender of Record Interests, the BBIL ULICO 2014 Lender of Record Interest and/or the OMNIA Lender of Record Interest, up to a maximum of the Indemnity Escrow Amount.” Escrow, 1. Under Section 1.3 of the Escrow, the Escrow Agent must hold the Indemnity Escrow Amount in escrow until the Receiver and SHIP give the Escrow Agent joint payment instructions to release any part of the monies in escrow. Escrow, 3.

In a separate letter agreement between the Receiver and SHIP that governed distributions by the Escrow Agent (the “*Indemnity Escrow Procedures Letter*,” Cyganowski Decl., Ex. C), the Receiver and SHIP were required to jointly direct the Escrow Agent to release the Indemnity Escrow Amount upon the entry of final, non-appealable order that a claim (the “*BAM Claim*”)

---

<sup>2</sup> The “*Debt Registry*” refers to a document that is attached to the Settlement as Exhibit A. See Dkt. No. 536-1 at 20 of 33.

asserted by BAM in the Receivership is invalid as to the Unresolved Portion. *See* Indemnity Escrow Procedures Letter Schedule 1 (“Release Date” defined, among other ways, as “the date on which a plan of liquidation treating . . . the entirety of the Proof of Claim filed by BAM Admin, as Agent, as unsecured or invalid is approved by a court of competent jurisdiction in a [final non-appealable order]”). Now that, as detailed below, the Receiver has disallowed the BAM Claim and no party has objected to her determination, the BAM Claim is permanently disallowed. SHIP has now demanded that the Receiver release the Indemnity Escrow to it based on its position that the Settlement and the Indemnity Escrow Procedures Letter require its release. In order to satisfy the condition precedent to the release of the Indemnity Escrow Amount, the Receiver requests that this Court confirm her determination and permanently enjoin any further prosecution of the Claim, with the exception of any portion of the BAM Claim representing a portion owned by PGS.

By way of background as to the claims process, this Court entered the Order Establishing Claims and Interest Reconciliation and Verification Procedures (the “*Claims Process Order*,” Dkt. No. 554) on December 1, 2020. Section I(B)(i) of the Claims Process Order required the Receiver to issue a Claims Analysis Report (defined herein) containing the Receiver’s determinations as to each filed claim. In accordance with the Claims Process Order, the Receiver carefully analyzed hundreds of claims asserted by dozens of claimants and issued such a report on March 9, 2021. *See* Dkt. No. 564. Section IV(A) of the Claims Process Order established a summary proceeding in the event that the Receiver and any claimants could not amicably resolve objections to the Receiver’s claims determinations. The Receiver disallowed the BAM Claim in its entirety (the “*Disallowance*”) because (i) at least a portion of it was duplicative of other settled claims (including those previously approved by this Court) and (ii) it was premised on a fraudulent conveyance. The Receiver therefore respectfully submits that, pursuant to the Claims Process

Order, because neither BAM nor any other party has served an objection to that determination, the BAM Claim is irrevocably disallowed and is without further force or effect.

Further, the Receiver submits that, as a result of the Disallowance as set out in the Claims Process Order, she would now be authorized to consent to the release of the escrow. SHIP agrees and has requested the Receiver release the Indemnity Escrow Amount to SHIP. However, in an abundance of caution, due to the size of the Unresolved Portion and its purported status as secured, even though the Putative Lenders did not object to the Settlement or the Disallowance, and because potential claimants who have been silent to date may surface in the future seeking sums in excess of the Escrow, the Receiver seeks this Court's confirmation of the Disallowance before agreeing to the release of the \$4,530,155.68 Indemnity Escrow Amount to SHIP in accordance with the Settlement and the Indemnity Escrow Procedures Letter, which was established pursuant to the Settlement with this Court's prior approval. *See* Dkt. Nos. 535-538.

In sum, and for the reasons set forth in more detail herein, because no party has come forth within the time established by the Claims Process Order to challenge or otherwise object to the Receiver's determination to disallow the BAM Claim, the Receiver respectfully requests that this Court: (i) permanently enjoin any further prosecution of the BAM Claim; (ii) confirm the Receiver's Disallowance, and (iii) confirm the Receiver's authority to release the \$4,530,155.68 Indemnity Escrow Amount to SHIP.

## **FACTUAL BACKGROUND**

### **1. The Relevant Parties**

Melanie L. Cyganowski is the Receiver for two groups of hedge funds referred to as the "*PPCO Funds*" and the "*PPLO Funds*." Settlement Decl. ¶ 10.<sup>3</sup> The PPCO Funds include the

---

<sup>3</sup> The "*Settlement Decl.*" shall refer to the Declaration of Melanie L. Cyganowski, as Receiver, in Support of Her Motion for Entry of an Order (A) Approving Settlement Agreements with (1) CNO Financial Group, Inc. and Related



following Receivership Entities: PPCO (the master fund, which made investments); four feeder funds that accepted investments from investors – US Feeder, TE Feeder, Int’l Feeder, and Int’l (A) Feeder – and Blocker (established for tax purposes). Another Receivership Entity, the PPCO Funds’ portfolio manager, PPCO Portfolio Manager, managed their investments. *Id.*

The PPLO Funds include two Receivership Entities: Platinum Partners Liquid Opportunity Master Fund L.P. and Platinum Partners Liquid Opportunity Fund (USA) L.P. *Id.* ¶ 11. Platinum Liquid Opportunity Management (NY) LLC, also a Receivership Entity, is their portfolio manager. *Id.*

SHIP is an insurance company based in Indiana that was formerly in the business of writing long-term care insurance policies and is currently in statutory rehabilitation. *See id.* ¶ 39. Fuzion (together with SHIP, the “*SHIP Parties*”) is an affiliate of SHIP. *Id.* ¶ 16.

Bankers Conesco Life Insurance Company (“*BCLIC*”) and Washington National Insurance Company (“*WNIC*”) are insurance companies based in Indiana that wrote long-term care insurance. *Id.* ¶ 2, 17. CNO Financial Group, Inc. (“*CNO*”) is their parent. *Id.* ¶ 17. 40|86 Advisors, Inc. (“*40/86 Advisors*”) is their affiliate. *Id.* 40|86 Advisors, together with CNO, BCLIC and WNIC, collectively, are referred to herein as “*CNO.*” BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub, as represented by Wilmington Trust, in its capacity as their former custodian shall be referred to as the “*Accounts.*” The Accounts and CNO shall be referred to as the “*CNO Parties.*”

The final group of parties relevant to this matter, include a web of domestic and offshore entities that were owned by a series of trusts, the beneficiaries of which include Moshe Feuer

---

Parties, and (2) Senior Health Insurance Company of Pennsylvania and Fuzion Analytics, Inc. and (B) Approving Use of Funds, Dkt. No. 536.

(“*Feuer*”), Scott Taylor (“*Taylor*”) and various Platinum principals and/or their family members and associates. The foregoing parties were purportedly involved in the reinsurance and investment advisory businesses. *Id.* ¶ 18. Specifically, the “*Beechwood Parties*” are BBIL, BRe, BBL, Beechwood Capital Group, LLC (“*BCG*”), Beechwood Re Investments, LLC (“*BRILLC*”), B Asset Manager LP (“*BAM I*”), BAM, B Asset Manager II (“*BAM II*”), Beechwood Re Holdings Inc. (“*BReHo*”), Feuer, and Taylor.

## 2. The Settlement

Under the Settlement, the Receiver agreed to pay \$14 million in exchange for a lien release, subject to SHIP’s securing certain deliverables from the Beechwood Parties and this Court’s granting of an order approving the Settlement. Settlement Decl. ¶ 43. Of the \$14 million settlement amount, the Receiver agreed to pay \$9,469,844.32 to SHIP, while the Indemnity Escrow Amount of \$4,530,155.68 would be held by the Indemnity Escrow Agent, pending satisfaction of the conditions to release of those funds. *Id.*

SHIP agreed to indemnify and hold the PPCO Parties harmless against all expenses, losses, claims, proofs of claim, damages, suits, proceedings, and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from amounts listed on the September 30, 2019, “*Debt Registry*” presented to the Receiver by SHIP’s attorneys, as follows:

<b>Unresolved Lender of Record</b>	<b>Principal Amount of Secured Debt Purportedly Held as “Lender of Record”</b>
<b>PBLA ULICO 2017</b>	\$339,261.21
<b>BBIL ULICO 2014</b>	\$1,530,543.58
<b>OMNIA Ltd.</b>	\$2,660,350.89
<b>TOTAL</b>	\$4,530,155.68

Settlement Decl. ¶ 25; *see also* Dkt. No. 536-1 at 20 of 33.

Based on the Debt Registry, the parties to the Settlement agreed that the Indemnity Escrow Amount would total \$4,530,155.68, which is the total alleged outstanding principal on that Secured Debt as listed on the Debt Registry. *See* Settlement Decl. ¶ 43. SHIP contends that the Putative Lenders are not creditors of the receivership estate and do not have any claims against the Receiver; nonetheless to ensure due process, SHIP agreed to the Indemnity Escrow so that if BAM or the Putative Lenders objected to the Settlement, there would be a source of recovery should this Court have determined otherwise. Since no party, including the Putative Lenders, objected to the Settlement or asserted any rights in response to the Claims Process Order with respect to the Unresolved Portion, SHIP submits that it is entitled to the Escrow Amount without further order of this Court.

The Indemnity Escrow Procedures Letter requires the Receiver and SHIP to jointly direct the Escrow Agent to release the Indemnity Escrow Amount based on the satisfaction of one of two conditions precedent: (i) a court makes a final determination that the BAM Claim must be paid, in which case the Indemnity Escrow Amount must be distributed to pay the BAM Claim (Indemnity Escrow Procedures Letter § 7); or (ii) an event occurs that triggers the “Release Date,” in which case the Indemnity Escrow Amount must be paid to SHIP (Indemnity Escrow Procedures Letter § 9). The Release Date is triggered by, among other events, a final, non-appealable order that the BAM Claim is invalid. *See* Indemnity Escrow Procedures Letter Schedule 1.

The Receivership Order granted the Receiver authority, “without further Order of this Court, [to] transfer, compromise, or otherwise dispose of Receivership Property in the ordinary course of business of the Receivership Entities’ orderly wind down, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate.” Receivership Order ¶ 28. The

Receivership Order further authorized the Receiver to “take any action which, prior to entry of this Order, could have been taken by the officers, directors, managers, managing members, and general and limited partners, and agents of the Receivership Entities.” Receivership Order ¶ 6(E).

The Receiver moved on July 1, 2020 for, among other things, an order approving the Settlement. Dkt. No. 535. The motion was unopposed, and on July 20, 2020, this Court entered its Order granting the Receiver’s motion to, among other things, authorize her to enter the Settlement. Dkt. No. 538.

### **3. The Claims Verification Procedures Order and the Claims Analysis Report**

On December 1, 2020, this Court entered the Claims Process Order. Dkt. No. 554. The Claims Process Order established the procedures by which the Receiver could finalize her determinations as to whether a claim filed against a Receivership Entity may become an “Approved Claim” and thus eligible for potential recovery under the plan of distribution.

The Claims Process Order provided that in determining whether or not to afford a claim the status of an Approved Claim, the Receiver may account for, among other considerations, whether: (i) a claim was properly asserted through a timely filed Proof of Claim; (ii) a claim was duplicative of any other Claim asserted against a Receivership Entity; (iii) a Claim was subject to any offsets or defenses that may be asserted, including with respect to any claimed lien purportedly securing the claim; and (iv) whether other grounds exist for denying a claim, in whole or in part. Claims Process Order I(A)(i); *see also* Cyganowski Decl. ¶ 8.

The Claims Process Order next required the Receiver to serve a “notice of claims analysis report.” Claims Process Order I(B)(i). The Receiver filed such a notice with this Court on March 9, 2021 and made it available on her website. *See* Dkt. Nos. 564 and 564-1 (the “*Claims Analysis Report*”); *see also* Cyganowski Decl. ¶ 1. In her Claims Analysis Report, the Receiver denied the

BAM Claim as duplicative of settled claims. Claims Analysis Report, Dkt. No. 564-1, 17 of 40. The Receiver further denied the BAM Claim for the reasons set forth in the Receiver's First Amended Complaint in *Cyganowski v. Beechwood Re Ltd.*, 18-12018 (S.D.N.Y.), Dkt. No. 83. In particular, the Receiver concluded that under New York Debtor and Creditor Law, the Receivership has no liability for the initial fraudulent transfers that resulted in the creation of the assignments that constituted the purported basis for the BAM Claim. *Id.*; Cyganowski Decl. ¶ 8.

The Claims Verification Procedures established procedures for claimants who disputed the Receiver's determinations. The Claims Verification Procedures required any claimant who disputed the Receiver's determinations to serve upon the Receiver objections to her determination (i) whether a claim is an Approved Claim, (ii) the allowed amount of the claim, and (iii) whether the claim is secured by property of a Receivership Entity. Claims Process Order, 4. Specifically, under the Claims Process Order, any objection had to comply with the following requirements:

Objections to the Claims Analysis Report shall (i) be in writing, (ii) state the name and address of the objecting party, the name and address of their counsel, if any, the assigned claim number, and the nature of the Claim of such party, (iii) state with particularity the basis and nature of all objections, and (iv) be electronically mailed to the Receiver, at her email address, platinumreceiver@otterbourg.com, so as to be *actually* received not later than 45 days after the Receiver's mailing of the Claims Analysis Report. Upon the timely service of an Objection, a Claim shall become a "*Disputed Claim*."

Claims Process Order, 4 (emphasis in original).

The Claims Process Order states that if a claimant failed to timely submit an Objection that "complies, in all respects, with the above instructions," then that claimant shall be "permanently preclude[d] . . . to object to or contest the Receiver's Claims Analysis Report as it relates to their Claim(s)." Claims Process Order, 5. The Claims Process Order further states that the effect of a failure to object makes the "Receiver's determinations set forth in the Claims Analysis Report . . . *final and binding*." *Id.* (emphasis supplied).

Since the Receiver disallowed the BAM Claim on March 9, 2021, neither BAM nor any other party has objected to the Receiver's Disallowance (either before or even after the deadline to do so). Cyganowski Decl. ¶ 12. Moreover, none of the Putative Lenders on whose behalf BAM could have claimed an interest have made any objection to the Receiver's determination (even though they would have lacked standing to do so, as they had not filed a proof of claim on their own behalf beyond the claim their agent filed in the first instance by the Bar Date). *See* Cyganowski Decl. ¶ 12.

## **ARGUMENT**

### **POINT I**

#### **THE COURT SHOULD CONFIRM THE DISALLOWANCE OF THE BAM CLAIM BY PERMANENTLY ENJOINING ANY PROSECUTION OF THE CLAIM**

Pursuant to the Claims Process Order, because neither BAM nor any Putative Lender has objected to the Receiver's disallowance of the BAM Claim, that claim is permanently disallowed. *See* Claims Process Order, 4-5. Because the BAM Claim is disallowed, and the BAM Claim was submitted by BAM as agent for the Putative Lenders to the extent they had a claim,<sup>4</sup> the contingency for which the Indemnity Escrow Amount was deposited in escrow has been avoided. Therefore, no further Receivership purposes are served if the Indemnity Escrow Amount remains in escrow and the Receiver should be authorized to consent to its release pursuant to Section 1.3 of the Escrow. *See* Escrow, 3.

The Receiver therefore requests that this Court, 45 days following the publication of notice of this motion in the Wall Street Journal (substantially in the form attached as Ex. D to the

---

<sup>4</sup> Nothing in this Motion should be construed as addressing SHIP's right to contest any right of the Putative Lenders to claim the Escrow on any grounds, and any such rights should be considered fully preserved. Similarly, the Receiver fully reserves her rights to contest, on any grounds, any claims by the Putative Lenders or others to either the Escrow or other funds relating to the BAM Claim.

Cyganowski Decl.), enter an order substantially in the form proposed (the “***Proposed BAM Claim Confirmation Order***,” Cyganowski Decl., Ex. A, or as so ordered the “***BAM Claim Confirmation Order***”), confirming the effect of the Receiver’s disallowance of the BAM Claim (defined herein) by permanently enjoining any further prosecution of the BAM Claim and ordering that the Receiver be permitted to consent to the release of the Indemnity Escrow Amount. To avoid any doubt as to the effect of BAM’s failure to interpose an objection, in addition to publication in the Wall Street Journal, the Receiver will provide notice of this Motion by sending it to BAM as well as additional parties listed herein who may have an interest in the outcome of this Motion and making it available on the Receiver’s website. If BAM or any other party fails to oppose the requested relief within this 45-day period, the Court should enter the BAM Claim Confirmation Order for the reasons stated herein.

**1. BAM, as Agent, has not Objected to the Receiver’s Disallowance of the BAM Claim**

The Claims Process Order set forth the requirements for any claimant who wished to challenge the Receiver’s determinations as to the validity, amount, and secured status of their claims. Among those requirements was a 45-day period for any claimant to submit its objection to the Receiver’s determinations as to their claim(s). Claims Process Order, 4. However, within the 45-day period specified by the Claims Process Order, BAM failed to make any objection to the Receiver’s determinations for itself or for the Unsettled Lenders. In addition, to date, the Receiver has not received any objection from any other party regarding the Disallowance. Cyganowski Decl. ¶ 12. Pursuant to the Claims Process Order, all parties are now “permanently preclude[d]” from interposing any objection as to the Disallowance, and the Receiver’s determination has become “final and binding.” *See* Claims Process Order, 5.



**2. The Receiver's Approach to the BAM Claim Is Consistent with Her Actions in This Case**

---

In entering into the Settlement, the Receiver did not rely solely upon the authority that this Court granted her in the Receivership Order. Rather, the Receiver thought it prudent and equitable, for the sake of transparency and to allow any stakeholders to speak should they have so chosen, to have the Court confirm that the Receiver's proposed course of conduct was in the best interest of the Receivership and its stakeholders. *See* Settlement Decl. ¶ 55. The Receiver believes it similarly prudent here to request that the Court confirm her disallowance of the BAM Claim by entering a permanent injunction against any prosecution of the Claim, and only then consent to the release of the Indemnity Escrow Amount. Therefore, this is not the only time the Receiver has sought to have the Court confirm her determination to proceed under previously provided authority.

Moreover, the Receiver's approach is appropriate given that the monies she seeks to release were, in the first instance, placed into escrow by an Order of this Court that specifically approved their deposit therein. It is thus similarly appropriate for the Court to confirm the ultimate disposition of the Indemnity Escrow Amount by confirming the Receiver's Disallowance of the BAM Claim and imposing an injunction against prosecution of the claim.

**3. An Extension of Time to Object, Though Not Required, Reinforces the Fairness of the Requested Relief**

---

The Settlement was entered by the Receiver before the Court entered the Claims Process Order and the Receiver issued her Claims Analysis Report. At the time, it was not possible for the Receiver to know what objections might arise from the determinations made in the Claims Analysis Report. Therefore, the Court, through its approval of the Settlement, provided the Receiver with an important reserve on which she could rely to resolve objections asserted

regarding the BAM Claim within the parameters of an eventual order establishing procedures by which claims would be determined and objections made.

That Claims Process Order has now been entered by this Court, and the Receiver has made her determinations thereunder by following the procedures ordered therein. Likewise, there is no argument that many claimants who have objected to the Receiver's determinations have—saying nothing of the merits of their objections—followed the procedures set out by this Court in the Claims Process Order and have, or are in the process of having, their claims determined pursuant to these procedures. Cyganowski Decl. ¶ 12.

The Court's power to determine the appropriate actions to be taken in the administration of an equity receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion is a result of the inherent powers of equity courts to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). Permanent injunctive relief "is appropriate where the party seeking the injunction has succeeded on the merits and 'show[s] the absence of an adequate remedy at law and irreparable harm if the relief is not granted.'" *Welch v. United Parcel Serv., Inc.*, 871 F. Supp. 2d 164, 199 (E.D.N.Y. 2012) (quoting *Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006)).

Here, it is squarely within the power of this Court to permanently enjoin prosecution of the BAM Claim. No party has come forward to object to the Disallowance. Cyganowski Decl. ¶ 12. Pursuant to the Claims Process Order, all parties are now "permanently preclude[d]" from interposing any objection as to the Disallowance, and the Receiver's determination has become "final and binding." *See* Claims Process Order, 5. Thus, because neither BAM nor any other person or entity has come forward with an objection to her Disallowance, the Receiver has

succeeded on the merits as against BAM's claim to assets of the Receivership Entities. If BAM, or any other claimant, including any of the Putative Lenders, is permitted to mount a direct challenge to the Disallowance or continue to prosecute the BAM Claim by any other means at some unknown point in the future, any plan of distribution may need to be delayed, altered, or unwound.<sup>5</sup> Cyganowski Decl. ¶ 13. No other legal remedy can provide the finality necessary to enter a plan of distribution without threat that the plan will be disrupted by the threat of litigation over a substantial putative claim on the assets of the Receivership Entities, nor is the disruption to the plan cognizable in terms of money damages, since such claim would be specious but nonetheless have to be dealt with. Having demonstrated success on the merits by application of this Court's Claims Process Order, and given the consequences to a plan of distribution by a later challenge to the Disallowance or any other continued prosecution of the BAM Claim (or any Putative Lender seeking to assert a claim on account thereof), it would be appropriate for this Court to confirm the effect of the Claims Process Order by permanently enjoining prosecution of the BAM Claim.

Given BAM's silence in the face of the Claims Process Order and the many who have heeded its procedures, it would be inherently equitable and procedurally proper for this Court to enter an order immediately confirming the Receiver's determination that its claim is disallowed and that as a result, the escrow may be released to SHIP without the Receiver facing the possibility of a later claim for which she would no longer be indemnified. Nonetheless, the Receiver submits this Motion on a 45-day notice to grant BAM and any others asserting an interest in the Unresolved Portion additional time to contest the Disallowance.

---

<sup>5</sup> It should be noted that the Putative Lenders have not independently asserted any claims in this Receivership and were not and should not be considered creditors as a result of not filing claims and their failure, as well as their agent's failure, to object to the disallowance. *See* Bar Date Order, Dkt. No. 453.

This extension of time clearly is not required by the Claims Process Order. Indeed, by its terms, the Claims Process only grants a claimant who objects to the Receiver's determination of their claim(s) 45 days to challenge such determination, and thereafter forever bars claimants who fail to interpose an objection and establishes the Receiver's determination as final. Claims Process Order, 4-5. That time has long since come and gone. Nonetheless, despite the fact this Court's Claims Process Order already establishes that the BAM Claim is permanently disallowed, the Receiver will (i) wait an additional 45 days for BAM or others to oppose the requested relief should they choose to do so and (ii) through multiple channels, place BAM and others (such as the Putative Lenders) on notice of the requested relief. Cyganowski Decl. ¶ 14.

The Receiver will give notice of this Motion in the following ways:

Direct Notice. Within three (3) business days of filing the Motion, the Receiver will provide notice of the Motion to the following recipients:

- A. BAM Administrative Services, LLC by email to their counsel at the following addresses: [ecanter@proskauer.com](mailto:ecanter@proskauer.com), [MHarris@proskauer.com](mailto:MHarris@proskauer.com), [SEilbaum@proskauer.com](mailto:SEilbaum@proskauer.com), and [sholinstat@proskauer.com](mailto:sholinstat@proskauer.com).
- B. Omnia Ltd. (i) by email to its joint provisional liquidators, who have recently contacted the Receiver,<sup>6</sup> at the following addresses: [rachelle.frisby@deloitte.com](mailto:rachelle.frisby@deloitte.com), [john.johnston@deloitte.com](mailto:john.johnston@deloitte.com), [cbbmomnia@deloitte.com](mailto:cbbmomnia@deloitte.com), and [marthinus.dreyer@deloitte.com](mailto:marthinus.dreyer@deloitte.com); and (ii) by email to its counsel in its Chapter 15 proceeding currently pending in the Bankruptcy Court for the Southern District of New York, 20-12793-LGB, at the following addresses: [nfk@stevenslee.com](mailto:nfk@stevenslee.com) and

---

<sup>6</sup> While I have been contacted by these joint provisional liquidators, it is important to note that they were not appointed until after the Bar Date established in the Bar Date Order, after the deadline for objection to the Settlement.

- [cp@stevenslee.com](mailto:cp@stevenslee.com).
- C. PB Life and Annuity Co., Ltd. (PBLA), in liquidation, and PB Investment Holdings Ltd., in liquidation (i) by email to their joint provisional liquidators who have recently contacted the Receiver, at the following addresses: [rachelle.frisby@deloitte.com](mailto:rachelle.frisby@deloitte.com), [john.johnston@deloitte.com](mailto:john.johnston@deloitte.com), [cbbcbmomnia@deloitte.com](mailto:cbbcbmomnia@deloitte.com), and [marthinus.dreyer@deloitte.com](mailto:marthinus.dreyer@deloitte.com); (ii) by email to their counsel in its Chapter 15 proceedings currently pending in the Bankruptcy Court for the Southern District of New York, 21-10623-lgb (PBLA) and 20-12791-LGB (PB Investment Holdings Ltd.), at the following addresses: [nfk@stevenslee.com](mailto:nfk@stevenslee.com) and [cp@stevenslee.com](mailto:cp@stevenslee.com).
- D. Wilmington Trust, National Association (as Escrow Agent) at the following addresses: [jnpowers@wilmingtontrust.com](mailto:jnpowers@wilmingtontrust.com) and [dyoung@wilmingtontrust.com](mailto:dyoung@wilmingtontrust.com).
- E. SHIP (i) by email to its general counsel at the following address: [krickard@shipltc.com](mailto:krickard@shipltc.com); and (ii) by email to its outside counsel at the following addresses: [aidan.mccormack@dlapiper.com](mailto:aidan.mccormack@dlapiper.com), [craig.martin@dlapiper.com](mailto:craig.martin@dlapiper.com), and [ellen.dew@dlapiper.com](mailto:ellen.dew@dlapiper.com).

Notice by Publication. Within five (5) business days of filing the Motion, the Receiver shall: (i) make this Motion and the Proposed BAM Claim Confirmation Order available on the Receiver's website ([www.PlatinumReceivership.com](http://www.PlatinumReceivership.com)); and (ii) cause a Notice of the Proposed BAM Claim Confirmation Order, attached as Ex. D to the Cyganowski Decl., to be published in the Wall Street Journal, or other such publication(s) that in the Receiver's sole and absolute discretion are reasonably calculated to provide notice to BAM. Any claimants shall have 45 days following the publication of said Notice of the Proposed BAM Claim Confirmation Order in the Wall Street Journal or any other publication(s) to submit an opposition to the relief requested by

the Motion.

**CONCLUSION**

For the reasons set forth herein, and in the supporting declarations, the Motion should be granted and an order, in substantially the form of the Proposed BAM Claim Confirmation Order, should be entered.

Dated: New York, New York  
March 18, 2022

**OTTERBOURG P.C.**

By: /s/ Erik B. Weinick  
Erik B. Weinick  
Andrew S. Halpern  
230 Park Avenue  
New York, New York 10169  
Tel.: (212) 661-9100  
Fax: (212) 682-6104  
[eweinick@otterbourg.com](mailto:eweinick@otterbourg.com)  
[ahalpern@otterbourg.com](mailto:ahalpern@otterbourg.com)

*Attorneys for Melanie L. Cyganowski, as  
Receiver*