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May 20, 2022

VIA ECF

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

Re: *United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC et al., 16-cv-06848*

Dear Judge Cogan:

We represent Daniel Small in the above-captioned matter. We write to request advancement of \$120,000 from the Receiver to cover a portion of Mr. Small's legal fees. Mr. Small's upcoming criminal trial in *United States v. Nordlicht*, 16-cr-640 (E.D.N.Y.) (the "Criminal Proceeding") is scheduled to begin in approximately two months, on July 27, 2022. Without these funds, Mr. Small will face substantial prejudice caused by the lack of resources to adequately prepare for and conduct the trial. We have conferred with the Receiver, and she does not consent to this request.

As this Court is aware, Mr. Small is an unsecured creditor of certain Platinum Partners entities and has submitted claims for his *pro rata* portion of: (i) approximately \$2.9 million in incurred legal fees, (ii) his unpaid compensation in the amount of \$130,000 against Platinum Partners Credit Opportunity ("PPCO"), and (iii) his arbitral award against the Platinum Partners Liquid Opportunity estate in the amount of \$9,566,326.57. (*See* ECF 613.)¹ In addition, Mr. Small filed a \$2.9 million advancement claim against the PPCO estate. Mr. Small maintains that he is entitled to advancement of his *pro rata* portion of the total amount of his submitted legal fees plus amounts subsequently incurred to prepare for his upcoming trial. However, as set forth below, in

¹ By submission of this letter, Mr. Small is not relinquishing or compromising his entitlement to his *pro rata* portion of all of his submitted claims. As of the date of Mr. Small's Supplemental Proof of Claims, Mr. Small's unpaid legal fees and expenses were approximately \$2.9 million, and he has requested that the Receiver establish a reserve for future legal fees and costs. (*See* ECF 613 at 1.)

an effort to ensure there is no prejudice to other unsecured creditors, we focus our request on the amount of Mr. Small's claims that the Receiver allowed in her Initial Claims Analysis Report.

On November 25, 2018, the Court ruled that Mr. Small had a right to advancement of his legal fees under the Amended and Restated Operating Agreement of Credit Funding LLC (the "Credit Funding Agreement"). (ECF 417 at 4 ("Levy and Small are entitled to advancement of their legal fees under the Credit Funding Agreement.")) The Court further ruled that advancement claims such as Mr. Small's are *pari passu* with other unsecured creditor claims and must wait until there is a determination of the distribution percentage unsecured creditors will receive. (*See id.* at 9 ("Since the estates' assets have not been fully liquidated, there is no way to know whether creditors will receive a 10% distribution or a 90% distribution on their claims."))

The PPCO estate has largely been liquidated in the three plus years since the Court's advancement ruling. (*See* ECF 627 at 12 ("The review of the Receivership's asset portfolio is complete.")) As of March 31, 2022, the primary assets of the PPCO estate consisted of (i) \$15.6 million of cash, (ii) stock and royalty interests, litigation financing and miscellaneous investments, and (iii) potential litigation claims. (*Id.* at 11–12, Exhibit A.)

Furthermore, the PPCO estate claims analysis process is substantially complete. The Receiver allowed \$32.2 million of unsecured creditor claims, with certain claimants, including Mr. Small, disputing the Receiver's determinations. (ECF 564-1 (Schedules B–G); ECF 597-3 at 2.) As of March 31, 2022, there is also \$5.88 million in accrued and unpaid administrative expenses due the Receiver and other professionals. (ECF 627 at 11.)²

Using the above numbers and conservative assumptions regarding administrative expenses going forward, the distribution percentage for unsecured creditors of the PPCO estate is calculated as follows:

Cash as of 3/31/2022	15,637,833
Accrued Admin Expenses	(5,880,000)
Future Admin Expenses	(2,000,000)
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Cash Available to Unsecured Claims	7,757,833
Allowed Unsecured Claims	32,244,353
Unsecured Distribution %	24.059%

In her initial Claims Analysis Report, the Receiver allowed \$983,017.17 of Mr. Small's approximately \$2.9 million advancement claim against the PPCO estate. (ECF 564-1 (Schedule C) at 1.)³ Based solely on the fact that Mr. Small objected to the Receiver's claim determination, the Receiver inexplicably reversed her partial allowance of this claim and subsequently argued to

² This is in addition to the \$30 million already paid to the Receiver and other professionals. (ECF 627 Exhibit A.)

³ Mr. Small contends that the PPCO estate is jointly and severally liable under Delaware law for the *pro rata* portion based on the full amount of his advancement claim of \$2.9 million. (*See* ECF 613 at 26–29.)

the Court in her Motion to Confirm that this claim should be denied in its entirety. (*See* ECF 602 at 32 (arguing that despite the Receiver’s findings in the Claims Analysis Report that Mr. Small’s legal expense claims “should be disallowed in their entirety”); *see also* ECF 597-1 ¶ 170.) Moreover, while Mr. Small argued that the Receiver’s “unprincipled and seemingly retaliatory conduct” was a basis to reject the Receiver’s arguments in the Motion to Confirm on equitable principles (*see* ECF 613 at 27–28), the Receiver did not respond to this argument in her reply brief in support of the Motion or dispute that her unexplained reversal was retaliatory and without justification. (*See* ECF 617 at 6–8 (making no mention of the Receiver’s reversal of her claims analysis determination).) Accordingly, based on the Receiver’s Claims Analysis Report, the Court should conclude that Mr. Small is entitled to at least \$983,017.17 on his advancement claim against the PPCO estate. Applying the above approximately 24.059% distribution percentage, Mr. Small therefore is entitled to at least \$236,504 of his advancement claim from the PPCO estate.

Because the Court has not yet issued an order resolving Mr. Small’s advancement claim, Mr. Small respectfully requests the Receiver be directed to advance him \$120,000 (approximately 50% of the amount he is entitled to even assuming the Receiver’s allowed claim amount which is a 66% reduction of his submitted claim and no recovery on remaining non-cash assets) to allow Mr. Small to prepare for and conduct his upcoming trial in the Criminal Proceeding, scheduled to begin on July 27, 2022. As this Court is aware, this will be a complex securities and wire fraud trial, with extensive electronic discovery and numerous exhibits. He desperately needs funds now to pay for essential trial costs and expenses to mount an effective defense. This reduced amount surely balances the interests of other unsecured creditors with the strong public policy interests of advancement and the ability to mount a proper defense.

Respectfully submitted,

/s/ Seth L. Levine
Seth L. Levine

cc: All Counsel of Record (via ECF)