

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

-v-

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

Defendants.

No. 16-CV-6848 (BMC)

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**THE RECEIVER’S MARCH 12, 2024  
INTERIM STATUS REPORT TO THE COURT**

Melanie L. Cyganowski, the duly appointed Receiver (the “Receiver”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP,<sup>1</sup> Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd. and Platinum Partners Credit Opportunities Fund International (A) Ltd. (collectively, the “Receivership Entities,” the “Platinum Entities” or “Platinum”), by her undersigned counsel,

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<sup>1</sup> Platinum Partners Credit Opportunities Master Fund LP and its feeder funds are collectively referred to herein as “PPCO” or “PPCO Funds” and Platinum Partners Liquid Opportunity Master Fund L.P., and its feeder funds are collectively referred to as “PPLO” or “PPLO Funds”.

hereby submits this interim report (the “Interim Report”). The Receiver has filed twenty-six quarterly status reports since her appointment.

This Interim Report is being filed in advance of the hearing scheduled for March 13, 2024 to provide the Court with a summary of the current status of the receivership case (the “Receivership”).

This Interim Report is organized into four (4) sections that summarize: (1) the financial condition of the Receivership, including the Receivership assets and liabilities; (2) the claims filed against the Receivership Entities, and the current status of the claims proceedings; (3) the Platinum investors and the amount of net investor claims in the Receivership; and (4) the current status of a plan of distribution.

## **I. Receivership Financials**

This section of the Interim Report discusses the Receivership financials, including a summary of the cash held by the Receivership, the disbursements made during the Receivership, and the Receivership’s assets and liabilities.

### **A. Cash and Disbursements**

As previously reported in the *Receiver’s Twenty-Sixth Status Report To The Court* [Dkt. 696], the Receivership held total cash of approximately \$17.3 million (\$13.8 million held by PPCO and \$3.5 million held by PPLO) as of December 31, 2023.

Since the appointment of the Receiver through December 31, 2023, the Receivership has recognized total cash and receipts of approximately \$97.9 million.

Since the appointment of the Receiver, the Receivership has disbursed \$80.6 million of cash, comprised of, among other things, the following disbursements:

- Receivership related expenses of approximately \$19.69 million, including payments for the preservation of the Acceleration Bay Asset, the ALS life settlements portfolio, the LC

Energy Asset and the Abdala Tailings Project (all of which no longer require any outlay of expenses). This amount also includes a Third Quarter 2017 payment of approximately \$5.9 million in connection with a settlement with Heartland Bank.

- Payments to certain claimants in the amount of approximately \$17.87 million, including (i) a Third Quarter 2020 payment of \$14 million (including the payment of \$4.5 million into an escrow fund) to settle the Beechwood Action and obtain a release of liens, and (ii) a Third Quarter 2020 payment of approximately \$3.87 million paid to the minority shareholders of an entity known as ALS.
- Business expenses of \$8.4 million (which include payroll and related expenses to Platinum employees and rent expenses).
- Court-approved professional fees and expenses of approximately \$32 million.

#### **B. Remaining Receivership Assets**

Other than cash held by the Receivership, there are only a handful of remaining assets that the Receiver continues to monitor with the hope of monetizing. Any value that these assets may have is speculative at this point. Other remaining assets are not believed to have any value and will likely be written off or abandoned. The following is a list of the remaining assets that the Receiver continues to monitor:

##### **i. China Horizon / Yellow River**

The China Horizon / Yellow River Asset is jointly held with PPVA<sup>2</sup> through a company called Principal Growth Strategy (“PGS”).<sup>3</sup> PGS owns equity and debt interests in China Horizon

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<sup>2</sup> “PPVA” refers to Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation). PPVA is the subject of insolvency proceedings pending in the Cayman Islands and a Chapter 15 bankruptcy proceeding in the U.S. Bankruptcy Court for the Southern District of New York. Martin Trott and Christopher Smith are the Joint Official Liquidators and Foreign Representatives of PPVA (the “Joint Liquidators”).

<sup>3</sup> As part of the Settlement Agreement with the Joint Liquidators of PPVA, as approved by the Court on August 18, 2022 [Dkt. 654] (the “PPVA Settlement”), PPCO will continue to hold a 45% interest in the net recoveries for any

and Yellow River—two companies supposedly created to build a chain of franchised convenience stores in rural China. The promissory note from China Horizon held by PGS has a face value of approximately \$9.0 million and PGS also holds approximately 6.5 million shares of common stock in Yellow River.

The Receiver has been monitoring this asset and, together with the Joint Liquidators of PPVA, exploring options for monetizing the asset, if possible. However, monetization is still speculative and any amount that may be realized and the timing of such monetization is still in flux and indeterminate.

### **ii. Agera Litigation**

Agera is a retail energy service company. Pursuant to their respective interests in PGS, both PPVA and PPCO agreed that PGS would pursue certain claims and causes of action relating to its ownership of a promissory note convertible into 95% of the common equity of Agera's subsidiary, energy reseller Agera Energy. In connection with such agreement, a complaint was filed in the Court of Chancery of the State of Delaware on June 7, 2019 against numerous defendants, including entities commonly referred to as AGH Parent, SHIP and CNO.

As part of the Settlement with PPVA, PPCO will continue to hold an interest in the recoveries of the Agera Litigation, albeit at a reduced percentage, but without any out-of-pocket cost to PPCO. The litigation is still in its initial stages, although the plaintiffs recently survived a motion to dismiss.

### **iii. Acceleration Bay Litigation**

Acceleration Bay refers to a litigation funding loan that the Receiver previously sold in 2017, but retained 5% interest in all amounts received by the purchaser from any litigation

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assets still jointly held with PPVA, including those held through PGS, except as otherwise set forth in the PPVA Settlement.

proceeds pursuant to the loan documents. Acceleration Bay is in the process of prosecuting claims against multiple entities that Acceleration Bay alleges are infringing on certain of its patents.

The Receiver monitors the status of the litigation and periodically speaks with counsel regarding the potential for recovery on the residual interest. Any recovery is speculative at this time.

**iv. Decision Diagnostics Equity**

Alpha Credit Resources LLC, a wholly-owned subsidiary of PPCO, holds certain common and preferred shares, convertible into common shares, in Decision Diagnostics. On February 19, 2021, the Receiver initiated an action in the United States District Court for the Eastern District of New York to enforce the Receiver's rights with respect to the Receivership's holdings in Decision Diagnostics.

At the end of 2021, the Receiver completed and finalized a settlement agreement with Decision Diagnostics for the turnover of certain stock. At this point the stock does not have value, but the Receiver continues to monitor it in the event that it rebounds.

**v. Pro Player Revenue Sharing Agreement**

Pro Player refers to a PPCO-related entity that made loans to professional athletes. The Receiver was able to monetize certain of the loan portfolio in 2018 by selling certain loans to Hilco IP Services, LLC d/b/a Hilco Streambank ("Hilco") for \$20,000 plus 25% of any net proceeds recovered by Hilco over \$100,000.00. The Receiver receives quarterly reports on any recoveries, but so far there have not been any recoveries on this investment. The Receiver will continue to monitor the asset, although the Receiver is doubtful that this asset will produce any additional recovery.

**vi. The Mark Nordlicht Settlement Agreement and the PPCO Proof of Claim in Mark Nordlicht's Bankruptcy Case**

In 2020 Mark Nordlicht filed an individual chapter 7 bankruptcy case in the U.S. Bankruptcy Court for the Southern District of New York. The Receivership has two assets in connection with the bankruptcy case.

The first asset is a settlement agreement between the Receiver and Mark Nordlicht that became effective on October 26, 2023. The Receivership received the initial settlement payment and a subsequent settlement payment of \$50,000 each. Mr. Nordlicht is required to make additional monthly payments to the Receivership over a period of five years. These additional monthly payments are based on his monthly income, not to exceed \$5 million, but must, in the aggregate, equal the minimum amount of \$250,000. Mr. Nordlicht has reported to the Receiver that he has had *no* monthly income for January and February of 2024, and, consequently, pursuant to the Settlement Agreement has not made additional monthly payments to the Receiver.

The second asset is the Receiver's amended proof of claim in the amount of \$154.8 million, which the Receiver filed in the Nordlicht bankruptcy case on October 26, 2023. It is not clear if, or when, the Nordlicht bankruptcy estate will make a distribution to creditors or the amounts that the PPCO Receivership will receive on account of the proof of claim. The Receiver continues to speak with counsel for the chapter 7 trustee and monitor the Nordlicht bankruptcy case, which has its own complexities including a pending appeal of an unrelated order.

**C. Liabilities**

**i. Accrued Administrative Expenses**

The accrued and unpaid administrative expenses total approximately \$5 million as of December 31, 2023. This amount includes the estimate of fees and expenses that have been incurred by the Receiver, Otterbourg and Teneo during the Fourth Quarter 2023, as well as

holdbacks for prior applications of the Receiver, Otterbourg, Teneo and Conway Mackenzie and holdbacks to the prior receiver's counsel (Cooley) with respect to its interim fee application.

Specifically, with respect to Cooley, on December 27, 2017, the Court entered an Order granting in part Cooley's first interim application for compensation, which allowed on an interim basis 55% of the fees requested by Cooley. Additionally, the Order allowed Cooley to seek allowance of any fees held back on its first interim application and any fees and expenses incurred subsequent to the time period covered by the first interim application in connection with the Court's consideration of final fee applications. Separately, no order was ever entered approving the prior receiver or his firm's fee application and, accordingly, this issue remains outstanding to be resolved.

In connection with proposing a plan of distribution, the Receiver requested a bar date for administrative claims incurred on or prior to June 30, 2022. In accordance with an order of the Court, administrative claims were required to be filed by October 21, 2022. No claims were filed in response to this bar date for administrative claims.

## **II. Proofs of Claim and Claims Resolution Process**

The bar date to file a proof of claim asserting a claim arising before the Receivership was March 29, 2019 and the bar date for governmental units to file a proof of claim was April 12, 2019. In excess of 300 claims were filed. The total amount of claims asserted against the Receivership Entities was approximately \$495.9 million.

On March 9, 2021, the Receiver issued a claims analysis report containing her determinations as to each filed claim (the "Claims Report"). As set forth in the Claims Report, the total amount of allowed claims against PPCO Master Fund was approximately \$32.5 million (including amounts for insider indemnification claims). The total amount of allowed claims against PPLO was approximately \$6.5 million (including insider indemnification claims).

Thirteen claimants, asserting multiple claims, objected to the determinations in the Claims Report.

As part of the claims reconciliation process, the Receiver's professional team contacted each of the claimants that objected to the claim determinations. Certain of these discussions resulted in consensual resolutions or the withdrawal of claims. As a result, the total amount of non-disputed allowed claims against PPCO Master Funds is approximately \$44 million, and the total amount of non-disputed allowed claims against PPLO is approximately \$5.5 million. These amounts are in addition to the investor claims, as discussed in Section III below, and the remaining disputed unsecured claims discussed in this Section.

There are now less than six claimants who are still disputing the Receiver's determinations set forth in the Claims Report. Those claimants include the claims of David Levy / Wilson Sonsini Goodrich & Rosati, P.C. (approximately \$8.7 million indemnification claim), Ford O'Brien LLP (approximately \$2.69 million indemnification claim), and Daniel Small (\$2.86 million indemnification claim).<sup>4</sup> Small and Levy each also dispute the Receiver's determinations regarding other claims they each filed in the total amounts of approximately \$9.7 million and \$2.47 million, respectively. The total amount of these disputed claims equals approximately \$26.42 million. Additionally, retired Bankruptcy Judge Richard Schmidt, in his capacity as trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust, asserts claims of approximately \$29.6 million that are entitled to priority over other claims. These disputed claims are addressed in the Receiver's "Omnibus Motion" [Dkt. 602], which is scheduled for hearing on March 13, 2024.

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<sup>4</sup> These claimants have supplemented their claims to also include fees and expenses incurred after the filing of the claims.



In addition to the disputed claims addressed in the Omnibus Motion, the claims that remain unresolved in the Receivership include the following:

- Claim 305 filed by Mark Nordlicht seeking payment for his legal fees in the estimated amount of \$10,000,000. The claim is now the property of the Nordlicht bankruptcy estate and is under the control of the chapter 7 trustee. The Receiver has been in discussions with counsel for the chapter 7 trustee regarding a resolution of the claim.
- Claim Number 145 filed by BAM Administrative Services, and a related indemnity escrow account. On March 18, 2022, the Receiver filed a motion to confirm the disallowance of Claim 145 and confirm the Receiver's authority to consent to the release of an indemnity escrow amount. On November 2, 2023, the Court granted the Receiver's motion. On December 1, 2023, the Joint Provisional Liquidators and authorized foreign representatives of Omnia, Ltd., appealed the order.
- Certain administrative claims of the prior receiver and his counsel.

### **III. Investors**

The Receiver has issued statements to each of the investors in PPCO and PPLO, which contain information regarding the respective investor's equity interests in the PPCO or PPLO entities. The investor statements set forth the amounts contributed to one or more of the PPCO or PPLO entities and the amounts previously received as distributions on account of the investor's equity interest, all as reflected in the books and records of the Receivership Entities. Investors had an opportunity to review the information provided and to refute the information, solely on the basis that the books and records of the Receivership Entities are inaccurate, subject to supportive documentation from the investor. The Receiver has resolved all disputes regarding the information set forth in the investor statements.

As a result of the reconciliation process, the Receiver has determined that there are 220 PPCO investors with net claims of approximately \$317 million dollars, and 22 PPLO investors with net claims of approximately \$16 million dollars. These amounts are in addition to the non-disputed allowed claims, and disputed claims, discussed in Section II above.

#### **IV. Plan**

Contemporaneously with seeking to resolve the remaining assets and the claims in the Receivership, the Receiver has been working on a plan of distribution. One of the gating issues to filing a plan has been the resolution of the disputed claims. Following the resolution of the disputed claims, the Receiver expects to propose a plan of distribution as soon as it is ready.

At the time of proposing a plan, the Receiver will seek the Court's approval of, among other things, (i) the distribution methodology to apply in calculating the distribution to be made on account of each claim and equity interest and (ii) the treatment of claims and equity interests under the plan of distribution. Investors and creditors will have the opportunity to object to the plan of distribution and any of its provisions, including the distribution methodology and treatment of claims and equity interests.

Following the approval of any plan, subject to any reserves that may be required for unresolved claims, the Receiver intends to make distributions to creditors and investors and proceed to wind down the remainder of the estate. The Receivership does not currently have any full-time employees, but has retained the former CFO and IT officer as consultants. The Receivership also no longer rents office space. In addition, the Receiver has begun the wind down of IT operations and document retention (or destruction) to allow her to complete the wind down of the Receivership Entities at the appropriate time.

Dated: March 12, 2024

Otterbourg P.C.

By:     /s/ Erik B. Weinick    

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*On Behalf of Melanie L. Cyganowski, as Receiver*