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April 24, 2024

**VIA ECF**

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

Re: SEC v. Platinum Mgmt. (NY) LLC, et al., No. 1:16-cv-06848-BMC

Dear Judge Cogan:

We write on behalf of Melanie L. Cyganowski, the court-appointed Receiver of the Platinum Receivership Entities, as that term is defined in the motions referenced below, in partial response to the April 23, 2024 letter, Dkt. No. 712 ("Letter") filed by Wilson Sonsini Goodrich & Rosati P.C. ("Wilson") and David Levy (together with Wilson, the "Claimants"). The Letter is procedurally and substantively flawed – amounting to a further sur-reply (without Court permission). The Receiver welcomes the opportunity to respond in full if the Court permits or so directs.[1] In sum, however:

**First**, ***there is no "newly discovered" evidence***. The Claimants rely on the Receiver's treatment of claims by three other law firms. However, that information was included in the Receiver's "Claims Report" that was filed over three years ago, on March 9, 2021, Dkt. No. 564. The report contained both the allowances and disallowances about which Claimants take issue, meaning they had more than reasonable time to seek documents in advance of the extensive briefing that followed. This is not "new evidence." *Cf.* Fed. R. Civ. P. 60(b) (newly discovered evidence is evidence that with which "reasonable diligence, could not have been discovered in time. . ."). Moreover, the Claimants only requested this information on April 16, 2024. The Receiver produced it to them in three days, on April 19, 2024.

**Second**, ***the Receiver's determinations of claims made by certain other law firms are not precedential***. Indeed, they are not even instructive because, *inter alia*, the other claims: (a) did not seek a priority; (b) were for substantially less money (in one instance, only $19,442.70) and therefore did

[1] This response does not address every incorrect assertion in the Letter, and the Receiver reserves all rights, including the right to address what are actually premature "plan" issues at the time she actually presents her plan to the Court for approval.

not warrant the litigation necessitated by the eight-figure priority claim made by these Claimants which would "swamp" the estate, and perhaps most importantly, (c) were substantially or entirely debts of a Receivership Entity, and therefore did not require allocation. These differences are the reason why the Claims Order, Dkt. No. 554, precluded attacks on the Receiver's determination as to one claimant by another – to allow the Receiver to use her discretion to determine each claim based upon the myriad of factors unique to it.

**Third**, ***the Receiver has not changed her position***. The Receiver has always acknowledged a non-priority indemnification obligation relating to work actually done for, or for the benefit of, a Receivership Entity. It does not include, in the case of these Claimants, work that these Claimants undertook for a non-Receivership Entity, such as, for example, the work they told Judge Rakoff related to Levy's actions on behalf of Beechwood, a non-Receivership Entity. That is why allocation is required, and that has consistently been the Receiver's position. Similarly, the Claimants mischaracterize the Receiver's legal positions on numerous other issues before this Court (e.g., that the Wilson Letter would violate Delaware law if interpreted as Wilson contends).

**Fourth**, ***the settlements are compromises, not concessions***. Claimants' attempt to portray the "Settlement Motions", Dkt. Nos. 705 and 709, as a concession by the Receiver on any point of fact or law still in contention with the Claimants flies in the face of well recognized public policy encouraging settlements to conclude litigation, and is specifically belied by the agreements themselves, which contain standard acknowledgments that the settlements were "solely to avoid further litigation and expense" and "in doing so, [the parties] do not concede any factual or legal allegations or assertions with respect to the Claims."[2] *See*, e.g., Dkt. No. 705-2, page 3 of 9, final "Whereas" clause.[3]

In sum, Wilson's alleged new evidence is a mere fig leaf intended to give Wilson cover for its latest, 7-page, sur-reply which it filed without Court permission. There is no new evidence, the Receiver has not shifted position, her treatment of other claims is not precedential, and her arguments are fully set forth in her papers and at the hearing, notwithstanding Wilson's attempted gloss. For these reasons, the Letter should be stricken or the Receiver allowed to respond in full.

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[2] For this same reason, Claimants cannot legitimately argue, as they do in the Letter, that the lack of objections by investors is an admission that the settled claims have priority over investor claims.

[3] The Receiver has stipulated with Claimants that she will not point to any decision by Claimants not to object to the Settlement Motions as evidence that they have waived their priority argument, although she reserves her right to continue to argue against priority. Claimants however should not be heard to argue, as they do in the Letter, that the lack of objections by any other stakeholders is a recognition by the non-objecting stakeholders that the settled claims by those settlements have priority over their claims.

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Thank you for your continued consideration of these matters.

Respectfully submitted,

*/s/ Erik B. Weinick*
Erik B. Weinick

cc: All counsel of record, via ECF