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April 25, 2024

VIA CM/ECF

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

Re: *SEC v. Platinum Management (NY) LLP et al.*, No. 1:16-cv-06848-BMC

Dear Judge Cogan:

This letter is respectfully submitted in response to the April 24, 2024, letter from Otterbourg PC, (ECF 713), counsel to the Receiver in the above-referenced matter.

First, the Receiver argues that the newly discovered evidence we identified in our letter is not "newly discovered" because it was in the Receiver's Claims Report. This is false. While the Claims Report listed the amounts claimed and the amounts allowed, the Report said nothing at all about the subject matter of the engagements giving rise to the claims of those firms or whether those firms had made some allocation on their own or in negotiation with the Receiver. So, for example, while we could see that Curtis Mallet had made a claim of approximately $350,000 for unpaid legal fees, and that the Receiver had allowed the entire claim without allocation, we did not know the subject matter of Curtis Mallet's work giving rise to the claim, or if that firm had negotiated some kind of allocation with the Receiver in advance of making its claim. What we now know is that Curtis Mallet was engaged to represent Platinum in the criminal investigations, and that there was no allocation of any kind negotiated by or demanded by the Receiver. The same types of information were revealed for the first time with respect to both Dechert and Morrison Cohen.

Second, the Receiver's effort to distinguish her treatment of the other three law firms is utterly feeble. The issue of how much of a claim should be allowed, and the issue of priority of payment are two separate issues. The Receiver's effort now to somehow justify disparate treatment of law firms that worked on the same matters when it comes to *allocation* by noting that one of those firms seeks to hold the Receiver to the clear and unambiguous language of the controlling Fund documents on the issue of *priority* is preposterous. The Receiver never articulated such an approach in any filing, and this clearly has been made up at this late hour to try to justify the Receiver's inconsistent treatment of similarly situated law firms.

Similarly misguided is the Receiver's suggestion that she can treat these law firms differently based on the size of their respective claims. The Receiver could have easily multiplied the claims of those other firms by .36, as she did with the Wilson claim, but she determined that no allocation should be made for the law firms representing either the Company or its employees in connection with the DOJ and SEC matters. Again, this appears to be an eleventh-hour effort to justify an unprincipled position.

The Receiver's suggestion that the claims of these three other law firms related entirely to receivership entities is also plainly incorrect. Curtis Mallet was engaged to represent Platinum Credit Management in connection with the investigations of the Southern and Eastern Districts of New York. Those investigations were obviously not limited to Platinum Credit Management as they focused on the very issues that gave rise to the indictment of Mr. Levy (and the work by Wilson that Platinum agreed to pay) and required attention to matters spanning both receivership and non-receivership entities, and yet the Receiver made no allocation to Curtis Mallet's claim. Similarly, Dechert was engaged to represent Platinum Management (NY) LLC[1], Platinum Credit Management LP, and Mark Nordlicht in connection with the same criminal investigations as well as the investigation of the SEC. Again, the work that Dechert performed was not somehow magically limited to receivership entities, and yet the Receiver allowed the entire claim of Dechert without allocation. Morrison Cohen was engaged to represent an individual employee of Platinum. Again, that work spanned many Platinum entities, both receivership entities and no-receivership entities and yet the Receiver again made no allocation.

Moreover, and to be clear, we are not attacking in the slightest the Receiver's determination with respect to these three other law firms. To the contrary, we agree that no allocation should have been made as to them as the work they needed to perform inextricably intertwined both receivership and non-receivership entities, and, as we have explained, under controlling Delaware law, no allocation is to be made in such a circumstance – just like no allocation should be made with respect to the Wilson claim.

The Receiver next suggests that the Wilson claim will somehow "swamp" the estate. Estates in liquidation and dissolution routinely confront the fact that they have inadequate funds to meet all claims. That is why it is so common for entities to establish the priority of payment of claims in such an event. Here, that is precisely what Platinum did: every investor agreed that unsecured creditors would be paid ahead of investors. So, to the extent that the claims of unsecured creditors exceed the amount of available distributable assets, that means that investors will receive no distribution – just as occurred when PPVA was liquidated and that liquidator followed the clear and unambiguous language relating to priority of payment, resulting in no distribution to investors.

Moreover, if anyone has "swamped" the estate it is the Receiver. She and her firm have been paid well above $30 million while collecting only $12 million for unsecured creditors and investors. Even if the Receiver were to get her way and be permitted to ignore the priority of

[1] Platinum Management (NY) LLC is not a receivership entity.

payments set forth in the Platinum Fund documents, that would result in mere pennies being distributed to each claimant – not much consolation to those individuals and entities in the face of the Receiver's enormous bounty.

Third, despite the Receiver having agreed to pay the unsecured creditor claims of Ford O'Brien and the Black Elk Trustee ahead of investors[2], she insists that she has ***not*** changed her position with respect to the priority of other unsecured creditors over investors. As such, it appears that the Receiver is taking the position that she should be empowered to treat some unsecured creditor claims as having priority over investors while treating other unsecured creditor claims as not having such priority. The Receiver points to no authority for taking such an inconsistent, unfair, and unprincipled position as to similarly situated claimants.

Fourth, the Receiver argues that as the agreements with Ford O'Brien and the Black Elk Trustee are mere "settlements" they should be ignored and have no bearing at all on the issue of priority of payment. But this asks the Court to close its eyes to what those settlements represent. If the Receiver truly believed that unsecured creditors stood in the same position as investors, there would have been no reason for the Receiver to enter into those agreements and pay out nearly $2 million, when the payout otherwise would have been a small fraction of that amount if those unsecured creditors had to wait to be paid at the same time as investors.

Finally, the Receiver complains that our prior letter was some kind of surreptitious sur-reply designed to ambush the Receiver. Nothing could be further from the truth. The undersigned spoke with counsel to the Receiver in advance of filing the April 23rd letter. The Receiver's counsel was briefed on both the newly discovered evidence point relating to the other three law firms that were engaged to work on the criminal matters, and the point that the settlement agreements appeared to be an acknowledgment on the part of the Receiver – finally – that unsecured creditors stood ahead of investors. The Receiver's counsel was also informed that we would be submitting our letter, and the undersigned agreed that if the Receiver had every right to respond to our letter. The Receiver's counsel has done just that.

We remain available to answer any questions the Court may have with respect to these issues, and respectfully request argument on the issues relating to priority of payment at the Court's very earliest convenience.

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[2] For the reasons set forth in our letter of April 23, 2024 (ECF 712), we have no objection to the settlement payments being made to Ford O'Brien and the Black Elk Trustee.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
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s/ *Michael S. Sommer*
Michael S. Sommer

Counsel for Claimant Wilson Sonsini

cc: All Counsel of Record (via CM/ECF)