



SIDLEY AUSTIN LLP
787 SEVENTH AVENUE
NEW YORK, NY 10019
+1 212 839 5300
+1 212 839 5599 FAX

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FOUNDED 1866

February 3, 2017

By ECF

The Honorable Dora L. Irizarry
Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States Securities and Exchange Commission v. Platinum Management (NY) LLC et al.*, No. 16 Civ. 6848 (DLI) (VMS)

Dear Chief Judge Irizarry:

We represent defendant Jeffrey Shulse in the above-captioned proceeding. Mr. Shulse joins in the arguments made in Defendants Daniel Small's, David Levy's, Joseph SanFilippo's and Jeffrey Shulse's Partial Opposition to the Application of the United States to Intervene and to Stay Civil Proceedings (Dkt. No. 79) (the "Opposition to the Application"), and likewise opposes the Government's application for a blanket and indefinite stay of this action during the pendency of the parallel criminal case. We write separately, however, to further explain why a blanket stay is unnecessary and severely prejudicial to Mr. Shulse at this early stage in the litigation, particularly when no discovery requests have even been propounded by the parties. For these reasons, as set forth below, Mr. Shulse seeks only a narrowly tailored stay of this case that respects the legitimate interests of both the defendants and the Government.

Mr. Shulse is a Certified Public Accountant, an attorney admitted to the Texas Bar, and an entrepreneur in the oil and gas industry. Unlike the other defendants in this action, Mr. Shulse never worked for any Platinum entity, nor did he ever market its products to any of Platinum's investors. Rather, Mr. Shulse is an expert in the business of oilfield operations. He has no connection to the hedge fund industry or, indeed, the wider financial industry, and has never even visited Platinum's offices in New York.

In 2011, Mr. Shulse founded Freedom Well Service, an oil well servicing company with an initial investment from Black Elk, which was majority owned by two Platinum funds. It was not until 2014, when he was appointed Chief Financial Officer of Black Elk, that Mr. Shulse first began to have any material interaction with (some) of the co-defendants in this action. Even the facts as pled in the SEC's Complaint make clear that Mr. Shulse's alleged involvement in the



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activities that are the subject of this action are peripheral at best. (SEC Complaint, ¶¶ 84, 87-88, 93, 100.) Accordingly, Mr. Shulse is eager to defend himself as robustly as possible against the serious allegations in this enforcement action (and the parallel criminal action). His reputation, credibility, and career, as well as his family's livelihood, are at stake and he is entitled to a timely opportunity to clear his name. *See SEC v. Jones*, No. 04 Civ. 4385 (RWS), 2005 WL 2837462, at *2 (S.D.N.Y. Oct. 28, 2005).

In order to do that effectively, however, Mr. Shulse must have the ability to take at least limited discovery in the SEC case during the pendency of the criminal case. Imposing a blanket stay at the very inception of the SEC action would seriously prejudice Mr. Shulse. In light of the complex nature of the criminal action, it may be years before that case is resolved and the SEC action can proceed, should the Court grant the Government's request for a blanket, indefinite stay. Given the circumstances of the parallel proceedings, Mr. Shulse has a compelling need to preserve witnesses' recollections and gather documentary evidence to prepare for trial in the SEC action. Specifically, virtually all of the witnesses relevant to Mr. Shulse's defense of the SEC case reside in and around Houston, Texas, and have no ties to New York or Platinum Partners. This is especially so with respect to Mr. Shulse's former colleagues at Black Elk, many of whom have since moved on to new positions following Black Elk's bankruptcy, and from the various outside lawyers who advised and counseled Mr. Shulse on the transaction at issue. In addition, the transaction at issue in the Black Elk matter—and the records of that transaction—are separate and distinct from the evidence pertaining to other parts of the Government's case. Given that both the SEC and the Government have already obtained extensive discovery for use in the civil and criminal cases, there is no reason why the Government must block Mr. Shulse from doing the same—as he is entitled to under the discovery rules governing the separate matters.

Indeed, the Government's argument that a full stay protects against an "unfair advantage" from civil discovery is entirely unpersuasive. If anyone is being put at an unfair advantage by the Government's request, it is Mr. Shulse, who—if the blanket stay were to be granted—would be prevented even from taking civil discovery of third parties in Texas for documents and information directly relevant to the civil charges against him.



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For all of the foregoing reasons, as well as the reasons set forth in the Opposition to the Application, Mr. Shulse respectfully requests that the Court deny the Government's request for a blanket stay and instead impose only a narrowly tailored stay that respects the legitimate interests of both the defendants and the Government.

Respectfully submitted,

/s/

David Rody
Barry W. Rashkover
Michael D. Mann
Sonia Marquez

cc: F. Andino Reynal, Esq.
All Counsel of Record (by ECF)