EXHIBIT A

Andrew M. Calamari
Sanjay Wadhwa
Adam Grace
Kevin P. McGrath
Neal Jacobson
Danielle Sallah
Jess Velona
Attorneys for the Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0180 (Velona)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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.**	**Civil Case No.** **Complaint** **Jury Trial Demanded**

Plaintiff Securities and Exchange Commission (the "Commission"), for its Complaint against Defendants Platinum Management (NY) LLC ("Platinum Management"), Platinum Credit Management, L.P. ("Platinum Credit"), Mark Nordlicht ("Nordlicht"), David Levy ("Levy"), Daniel Small ("Small"), Uri Landesman ("Landesman"), Joseph Mann ("Mann"),

Joseph SanFilippo ("SanFilippo") (collectively the "Platinum Defendants"), and Jeffrey Shulse ("Shulse") (all collectively "Defendants"), alleges as follows:

SUMMARY

1. This case involves a multi-pronged fraudulent scheme by Platinum Management and Platinum Credit, the managers of hedge funds Platinum Partners Value Arbitrage Fund L.P.(together with its feeder funds, "PPVA") and Platinum Credit Opportunities Master Fund L.P. (together with its feeder funds, "PPCO"), respectively, led by Nordlicht, the co-Chief Investment Officer ("CIO") of PPVA and PPCO.

2. To existing and prospective investors, Platinum Management projected stability and confidence, reporting steady, positive returns every year that averaged 17% annually from 2003-15. It also guaranteed its investors liquidity, as they were permitted to redeem on 60 or 90 days' notice (depending on when they invested) and receive payment of 90% of their redemption request within 30 days thereafter. Marketing materials likewise stressed the fund's ready capacity to liquidate positions.

3. Behind the scenes, however, PPVA faced a growing liquidity crisis, which Platinum Management, Nordlicht, Landesman, Mann and SanFilippo in various ways concealed from existing and prospective investors for years. In fact, PPVA's growing concentration in illiquid positions made it ever-more difficult for Platinum Management to pay investor redemptions on time each quarter. Internal documents discussing redemptions are replete with references such as "Hail Mary time," and of hoping that new subscriptions would prove sufficient to pay current redemptions. As early as November 2012, Nordlicht and Landesman complained that redemptions were "daunting " and "relentless," and in June 2014 Nordlicht wrote Landesman that "It can't go on like this or practically we will need to wind down. . . . this

is code red . . . We can't pay out 25 million in reds [redemptions] per quarter and have 5 come in." Nonetheless, existing and prospective investors were kept in the dark for years about PPVA's liquidity crisis; to the contrary, Platinum Management continued to market the fund's flexible redemption terms even as it struggled to pay redemptions.

4. Platinum Management also deceived investors by vastly overvaluing its interest in a small oil production company, Golden Gate Oil LLC ("Golden Gate"). This position, valued at times by Platinum Management at around $170 million, purported to represent more than 19% of PPVA's total assets at the end of 2013. In fact, it was worth a fraction of that. Golden Gate consumed more than $20 million in PPVA loans and yet barely produced any oil, suffered large operating losses and never made a single interest payment on PPVA's loans. Tellingly, when Platinum Management engaged in transactions involving Golden Gate, including buying or selling options to buy interests in the company, they were at values much lower than what it carried on its books. Indeed, it eventually purchased the remaining 52% of Golden Gate for a mere $3.2 million, and yet it was still touting an enterprise valuation of at least $170 million. Platinum Management's inflation of Golden Gate's valuation by itself led to an overstatement of PPVA's AUM by as much as 13% at the end of 2014.

5. Platinum Management also orchestrated a fraudulent scheme in connection with its other major oil investment, Black Elk Energy Offshore Operations LLC ("Black Elk"). In part to cope with the fund's deepening liquidity crisis, Nordlicht, two of his colleagues, Levy and Small, and Black Elk CFO Shulse, schemed to divert almost $100 million – proceeds of a forthcoming asset sale – out of Black Elk to benefit preferred shares held mostly by PPVA and its affiliates. The problem was that Black Elk noteholders, some of whom were independent of Platinum Management, had priority over preferred shares, and Platinum Management and its

affiliates, which dominated Black Elk's management, could not participate in any vote among noteholders to change this priority. Thus, Nordlicht and others created a deceptive consent solicitation process and rigged the vote. They secretly transferred a large block of notes from PPVA and its affiliates to various entities advised by two other entities, B Asset Manager and B Asset Manager II (together, "BAM"), for whom Levy served as CIO. They drafted a solicitation document that falsely stated that PPVA and its affiliates only held $18 million in notes, when in fact they controlled almost $100 million. BAM affiliates then joined PPVA and its affiliated funds in casting its controlling block of notes for the consent solicitation. Once the votes were counted, and Platinum Management's fraudulent scheme prevailed, Nordlicht, Levy and Small directed Shulse to wire almost $100 million out of Black Elk for the benefit of PPVA and its affiliates.

6. Meanwhile, in 2014-15, PPVA's liquidity crisis worsened, and Platinum Management resorted to other schemes to keep the fund afloat. For example, faced with relying on heavy short-term borrowing at annual interest rates as high as 19%, Platinum Management and PPVA CFO SanFilippo told PPVA's auditor that the loans were done to complete "investment transactions" — a false explanation provided to investors in the fund's audited financials, when they were finally released to investors months later than they were supposed to be. Platinum Management's internal documents confirmed that the real purpose for the high-interest borrowing was to ease the fund's liquidity constraints.

7. In mid-March 2015, Nordlicht, Landesman and other senior Platinum Partners officials schemed to meet a sudden wave of over $70 million in redemptions by pressing redeeming investors to cancel those redemptions or at least defer them one quarter, and to launch an aggressive push for new investment money, all while concealing PPVA's liquidity

crisis. Their pitch focused on anticipated investment gains in the following month, while omitting mention of the firm's significant liquidity crisis, which would obviously scare new investors and people looking to redeem.

8. Nordlicht also treated investor monies held in separate funds under the Platinum Partners umbrella as fungible, transferring money between funds as needed to meet liquidity demands, contrary to promises made to investors in each fund and representing an obvious conflict of interest. In particular, Platinum Management schemed with Platinum Credit to have PPCO make over $30 million in loans to PPVA in least in part to help PPVA make payments that were coming due. On one occasion, $7 million in new subscriptions to PPCO was diverted to PPVA within 24 hours to pay off an overdue short-term loan owed by PPVA. Also, certain preferred redeeming PPVA investors were allowed to transfer interests worth millions of dollars to PPCO, but no cash moved from one fund to the other. The amount was merely added to the principal owed by PPVA on its outstanding loan from PPCO, and PPCO got nothing more than a promise to pay by a fund that couldn't pay its redemptions.

9. Along the way, Platinum Management and Nordlicht also repeatedly paid redemptions in a preferential manner, even as they continued to market redemption rules that promised investors equal treatment.

10. Eventually, in late November 2015, Platinum Management placed a majority of PPVA's assets, all highly illiquid, in a "side pocket", from which no redemptions were possible for three years. Even then, however, few redemptions were paid from the supposedly more liquid original PPVA fund.

11. In June 2016, after the FBI executed a search warrant on Platinum Management's premises, as well as the filing of criminal charges against a co-owner of Platinum Partners (the

umbrella entity for the Platinum companies), Nordlicht announced to investors that PPVA and PPCO would stop taking in new money and would look to monetize current investments in an orderly fashion.

12. The PPVA fund is currently in liquidation in the Cayman Islands, while the PPCO fund and another Platinum Partners affiliated fund (the Platinum Partners Liquid Opportunity Fund ("PPLO")) have contractually retained an independent monitor. By way of this action, the Commission seeks to have a court-appointed receiver installed over the domestic PPCO and PPLO funds and their respective advisers (together, the "Receivership Entities"), in order to protect investor assets and secure a fair and orderly process by which assets are liquidated and distributions are made to investors.

VIOLATIONS

13. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit and Nordlicht, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act"), 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

14. By virtue of the conduct alleged herein, Nordlicht, in the alternative, aided and abetted Platinum Management's and Platinum Credit's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; and Landesman, Levy, Mann, SanFilippo and Small aided and abetted Platinum Management's violations of Section 206(4) of the Advisers Act, 15 U.S.C. §80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8 .

15. By virtue of the conduct alleged herein, Platinum Management violated Section 206(4) of the Advisers Act, 15 U.S.C. §80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2.

16. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit Nordlicht, Landesman, Levy and SanFilippo, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), and Mann, directly or indirectly, singly or in concert, has engaged and is engaging in transactions, acts, practices and course of business that constitute violations of Securities Act Section 17(a)(1) and (3), 15 U.S.C. § 77q(a)(1) and (3).

17. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit Nordlicht, Landesman, Levy, SanFilippo and Small, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5, and Mann and Shulse, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Exchange Act Section 10(b), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. §240.10b-5(a) and (c).

18. By virtue of the conduct alleged herein, Nordlicht and Levy, in the alternative, aided and abetted Platinum Management's and Platinum Credit's violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; Landesman, Mann and SanFilippo, in the alternative, aided and abetted Platinum Management's violations of Section 17(a) of the

Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; Small, in the alternative, aided and abetted Platinum Management's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; and Shulse, in the alternative, aided and abetted Platinum Management, Nordlicht, Levy and Small's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

19. The Commission brings this action pursuant to the authority conferred upon it by Section 209 of the Advisers Act, 15 U.S.C. § 80b-9, Section 20 of the Securities Act, 15 U.S.C. § 77t, and Section 21 of the Exchange Act, 15 U.S.C. § 78u, seeking to permanently enjoin Defendants from engaging in the acts, practices and courses of business alleged herein and for such other relief as set forth below.

20. In addition, the Commission brings an emergency action seeking: (1) a temporary restraining order and preliminary injunction against Defendant Platinum Credit enjoining it from future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; (2) appointing a receiver over the Receivership Entities; (3) prohibiting the Receivership Entities from destroying or altering any documents; and (4) permitting the Commission to conduct expedited discovery.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 214 of the Advisers Act, 15 U.S.C. § 80b-14; Sections 20(b), 20(d) and 22(a)

of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

22. Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which occurred in this District.

23. For example, various investors and portfolio managers were located in Brooklyn, New York, and communications in furtherance of the fraudulent schemes and other violations alleged herein were sent to them through the means or instruments of communication in interstate commerce.

DEFENDANTS

24. **Platinum Management** is an investment adviser registered with the Commission since September 2, 2011. It is a Delaware limited liability company headquartered in New York, New York, and is the adviser to various funds, including PPVA. Platinum Management's March 30, 2016 Form ADV ("ADV") reported that it had approximately $1 billion in assets under management ("AUM").

25. **Platinum Credit,** a Delaware limited partnership headquartered in New York, New York, is a relying adviser of Platinum Management, *i.e.*, it is included within Platinum Management's umbrella adviser registration with the Commission. Platinum Credit is the adviser to the PPCO. Platinum Management's March 30, 2016 ADV reported that Platinum Credit had approximately $590 million in AUM in PPCO. .

26. **Nordlicht**, 48, resides in New Rochelle, New York. He is chairman of Platinum Partners, the umbrella organization for the various funds, co-chief investment officer or CIO of

Platinum Management and Platinum Credit, and CIO of Platinum Liquid Opportunity Management (NY) LLC ("Platinum Liquid"), a relying adviser of Platinum Management. He also owns, directly and indirectly, between a 20% and 33% beneficial interest in Platinum Management, Platinum Credit and Platinum Liquid, and he, his relatives and/or related trusts are also investors in certain of the funds managed by the above-named advisers. Nordlicht also was a member of the managing member of Platinum Partners Black Elk Opportunities Fund LLC ("PPBE"). From 1998-99, he held Series 7 and Series 63 licenses and was registered with FINRA.

27. **Levy**, 41, resides in New York, New York. He is an owner and co-CIO of Platinum Management and Platinum Credit. He previously served as a PPVA portfolio manager from 2006 to approximately the end of 2013, including with respect to PPVA's investment in Black Elk. He also was chairman and CIO and general partner of the managing member of PPBE. At the end of 2013, Levy purported to leave Platinum Partners, and he became the CIO and 10% owner of B Asset Manager LP and B Asset Manager II LP (together, "BAM"), the CIO, CFO, and 49.99% owner of Beechwood Re Ltd., and the CIO and 49.99% of Beechwood Bermuda Ltd. (the latter two, together, "Beechwood").

28. **Small**, 45, resides in New York, New York. From 2007 to at least 2014, he was a managing director and portfolio manager at PPVA, and a portfolio manager of, among other things, Black Elk. He also was a managing director and portfolio manager of PPBE. From July 2009 to at least 2014, he served as a Platinum Management-appointed member of Black Elk's board of managers.

29. **Landesman**, 55, lives in New Rochelle, New York. He was managing general partner of PPVA and PPLO until approximately April 2015, and formerly held a percentage of

Platinum Management's ownership. Thereafter, he continued to have substantial responsibility for investor communications for PPVA. He also supervised PPVA's Chief Marketing Officer.

30. **Mann**, 24, resides in Brooklyn, New York. At times pertinent to this Complaint, he worked in the investor relations department of Platinum Management.

31. **SanFilippo**, 38, resides in Freehold, New Jersey. At times pertinent to this Complaint, he was the CFO of PPVA. He is licensed as a CPA in New York.

32. **Shulse**, 46, resides in Houston, Texas. He was the CFO of Black Elk from approximately January to September 2014, and the CEO thereafter until early 2015. His Texas CPA license expired in 2014 and was suspended thereafter due to Shulse's failure to complete his mandatory continuing professional education, or CPE.

RELATED ENTITIES

33. **PPVA** is a Cayman Islands exempted limited partnership managed directly by Platinum Management. PPVA has the following feeder funds: Platinum Partners Value Arbitrage (International) LTD; Platinum Partners Value Arbitrage Fund (USA) L.P.; and, Platinum Partners Value Arbitrage Intermediate Fund LTD. The PPVA feeder funds were offered only to qualified purchasers, as that term is defined in the Investment Company Act of 1940 (the "Company Act"). PPVA was marketed as a multi-strategy fund that includes long/short fundamental equity trading; asset-based financing in energy, mining, and other industries; energy-related and Asia-based arbitrage opportunities; and event-driven investing in corporations.

34. **PPCO** is a Delaware limited partnership managed by Platinum Credit. It has the following feeder funds: Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund International (A) LTD.; Platinum Partners Credit

Opportunities Fund International LTD.; Platinum Partners Credit Opportunities Fund LLC; and, Platinum Partners Credit Opportunity Fund (BL) LLC. The PPCO feeder funds were offered only to qualified purchasers, as that term is defined in the Company Act. PPCO was marketed as a single-strategy fund that invests in asset-based loans in areas such as natural resources, energy litigation, life insurance settlements, and receivables.

35. **Platinum Liquid** is a Delaware limited liability company that serves as the investment manager to Platinum Partners Liquid Opportunity Fund (USA) L.P. ("PPLO USA"); Platinum Partners Liquid Opportunity Fund (International) LTD,; Platinum Partners Liquid Opportunity Intermediate Fund L.P. and Platinum Partners Liquid Opportunity Master Fund L.P. (the "PPLO Master Fund") (such funds, together, "PPLO"). It is a relying adviser of Platinum Management. Platinum Management's March 30, 2016 ADV reported that Platinum Liquid had approximately $27 million in AUM in PPLO. At times pertinent to this Complaint, Nordlicht was the CIO for Platinum Liquid and was "responsible for oversight of all trading, asset allocation and risk management on behalf of the Platinum-managed funds." At times pertinent to this Complaint, Nordlicht was the majority owner of Platinum Liquid. Landesman became President of Platinum Liquid in April 2010 and became the managing member of Platinum Liquid effective January 1, 2011.

36. **B Asset Manager LP and B Asset Manager II LP** (together, "BAM"), headquartered in New York, are operationally integrated unregistered investment advisers that manage assets primarily obtained by their controlled affiliates through reinsurance contracts with domestic insurance companies and under investment management agreements made directly with domestic insurance companies. Nordlicht, Levy, and two other close associates collectively

owned 68.9% of BAM through at least August 2016. BAM claims to have approximately $2 billion in AUM and is an affiliate of the Beechwood reinsurance entities.

37. **PPBE** is a special purpose vehicle through which other Platinum funds and individual investors obtained interests in Black Elk Class E preferred shares.

FACTS

Background

38. Platinum Partners had two principal funds – PPVA, created in 2003, and PPCO, formed in 2005. PPVA, the flagship, was billed as a multi-strategy hedge fund, ranging from long/short equity fundamental strategies and arbitrage to asset-based finance. Meanwhile, a primary investment strategy of PPCO was "to originate a variety of high yield, fixed income instruments."

39. PPVA was billed as a liquid fund. Its domestic and foreign feeder fund PPMs, consistent with their respective limited partnership agreement ("LPA") and governing articles, set out a fixed, orderly redemption process for all investors: quarterly redemptions, upon 60 or 90 days advance notice (depending on the version of the PPM), with the fund "intend[ing] to pay" to the investor at least 90% of the amount requested within 30 days, with the remaining 10% potentially held back for completion of the fund's audit. Nothing elsewhere in the PPMs or their respective formative documents granted broad discretion to pay some redemption requests but not others, particularly those submitted in the same cycle.

40. Platinum Management's Due Diligence Questionnaires for PPVA ("DDQs") confirmed the fund's liquidity. From September 2013 through September 2015, they stated, in part,

> How long does it take to exit the most liquid positions in the portfolio?
> The Fund's most liquid positions could, under normal market conditions, typically be liquidated in less than a week, including assets in the Energy and Power Arbitrage,

Long/Short Fundamental Equity, Event Driven, Quantitative and Asia Based Arbitrage strategies.

The listed liquid strategies represented more than half of the portfolio during that same period, according to monthly "tear sheets" sent to investors, as well as marketing presentations provided principally to prospective investors. For example, a May 2016 presentation stated the fund was targeting "42% risk allocation to short term trading and relative value strategies, 26% to event driven strategies and 32% to asset based finance strategies."

41. Fund documents also carefully delineated the separation between the finances of the PPVA and PPCO funds. For example, the March 2015 PPCO and April 2015 PPVA PPMs stated, as a risk factor, that they permitted loans to or from affiliated funds, but only in narrow circumstances: "in the event that an affiliate fund, such as one of the Platinum-managed funds, requires additional funds on a short-term basis in order to make an investment, the Master Fund may loan such affiliate fund any amounts to facilitate such investment"; likewise, "in the event the Master Fund requires additional funds on a short-term basis in order to make an investment, the Managing Member, the Loan Portfolio Manager or their Affiliates and/or an affiliate fund, such as one of the Platinum-managed funds, may loan the Master Fund any amounts to facilitate such investment" (quoting PPCO Onshore March 2015 PPM; emphasis added.).

42. On the surface, PPVA and PPCO were highly successful funds. As of March 2016, Platinum Management reported that PPVA had almost $1.1 billion in AUM, and PPCO had almost $600 million in AUM. Also, PPVA reported a virtually unbroken string of strong and steady reported performance, with its NAV going up each year from 2003 to 2015, for an average annual return of 17%, with typically small gains reported for 85% of the months throughout this period.

43. Beneath the surface, however, lurked serious problems, which defendants kept from investors for years. In fact, from at least 2012, PPVA faced recurring liquidity crises. There was a growing liquidity mismatch, as the fund became increasingly concentrated in illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded. And yet, many investors could and did demand their money back every quarter. Although the liquidity crisis extended for years, Platinum Management did not – for whatever reason – sell enough of its illiquid portfolio to overcome this crisis. Instead, it took cash out of more liquid strategies, thus skewing the balance of the portfolio toward greater illiquidity even while the liquidity pressures remained.

44. For example, in a November 6, 2012 email entitled "Current Redemptions Nov 5, 2012," a Platinum Partners employee advised Nordlicht that there were "$27 million total," apparently referring to outstanding redemption requests. Nordlicht forwarded this email to Landesman and stated: "If we don't exceed this in subs [new subscriptions] from dec 1 and jan 1 we are probably going to have to put black elk [one of the fund's illiquid investments] in side pocket. I also need to pay back [a loan from an individual] and an additional 4 million oct 31 and nov 30 so we are talking 40" – apparently indicating they needed to get $40 million in new subscriptions to cover pending redemption requests and other obligations. Landesman responded by saying he would try his best, and that he thought "…we could sweep the table here, so far, think Jan. 1st is a possibility for some, if not all." Nordlicht replied that "it's just very daunting. It seems like we make some progress and then reds [redemptions] are relentless almost. It's tough to get ahead in subs [subscriptions] if u have to replace 150-200 a year…." Landesman replied: "Didn't take it as complaining, it is my job. Redemptions very daunting."

45. That said, illiquid positions, most of them categorized for accounting purposes as "Level 3" assets, which represented almost 80% of fund assets at the end of 2014, had one virtue for Platinum Management: since they were not publicly traded and there were no other readily available market prices, they were valued by Platinum Management itself, "determined in such manner as may be selected from time to time by the Investment Manager in its discretion."

46. To be sure, the PPVA PPMs limited this discretion by requiring that the result represent "fair value." Platinum Management reassured investors by noting in its DDQs that its valuations were verified by an internal valuation committee. And the DDQs, tear sheets, and marketing presentations touted that Platinum Management used the services of an independent valuation agent. In reality, however, Nordlicht often instructed his staff to adjust the values of various positions up or down, with the staff left to flesh out the rationales for those adjustments.

47. Platinum Management's external auditor in early 2015 reported to it that "a material weakness exists in the Master Fund's investment valuation process related to its Level 3 investments." Platinum Management did not disclose to its investors this important information. The auditor also identified a "very material" misstatement that required a large markdown of the valuation of one large, illiquid position, triggering a restatement of the fund's year-end 2013 AUM.

48. Platinum Management terminated that auditor. Still, the replacement auditor included in its 2014 opinion, which it did not issue until September 2015, an "emphasis-of-matter" stating that management's estimated values for investments representing over $800 million rested on unobservable inputs, and that the amounts that might be realized in the near-term could differ materially from management's valuations.

49. Platinum's substantial control over the valuations of its illiquid positions helped ensure that fund performance, which was largely composed of unrealized gains, remained steady. This was essential, because shortfalls in performance could be expected to trigger more redemptions, and so deepen the liquidity crisis.

Overvaluation of Golden Gate Oil LLC Investment

50. A principal example of PPVA's growth in AUM through unrealized gains is Platinum Management's manipulation of the valuation of its disastrous investment in Golden Gate, a start-up oil production company it helped create in 2012. In 2013 through 2014, PPVA's reported AUM of approximately $900 million to $1 billion rested heavily on the valuation of this single investment. Whereas Platinum Management valued Golden Gate at approximately $78 million at the end of 2012 (when PPVA's equity interest in Golden Gate was 48% of the company, or $37 million), the value rose sharply to $173 million at the end of 2013 (when PPVA owned or had the option to buy a 100% interest).

51. At the end of 2013, the Golden Gate equity and loan constituted approximately 19% of PPVA's AUM, the fund's largest position. At the end of 2014, even after the price of oil had plummeted 60%, from $100 to $40 per barrel, PPVA valued its equity in Golden Gate at $140 million, less than 20% below its 2013 year-end valuation. It also continuously valued at par its loans to Golden Gate, which reached $18 million in principal by the end of 2013, even though Golden Gate never made a single interest payment to PPVA.

52. Throughout this period, Nordlicht was principally responsible for setting the valuation of Golden Gate for PPVA. Golden Gate was vastly overvalued, for multiple reasons.

53. First, PPVA sharply increased its valuation of Golden Gate while in fact the company's performance was falling far below initial projections, with minuscule oil production

and heavy operating losses. Golden Gate's first stage involved the drilling of seven wells, but it encountered large drilling cost overruns, consuming $18 million borrowed from PPVA by the end of 2013, as well as delays in obtaining needed permits. Moreover, the wells produced mostly water and many were shut in (*i.e.*, not producing). The only consistently-producing well provided revenue representing less than 10% of initial projections. As a result, far from generating the expected millions in cash flow to pay for future drilling, Golden Gate generated $6 million in net losses in 2013.

54. Second, several transactions with third parties concerning the sale of some or all of Golden Gate's assets were for a mere fraction of the valuation that PPVA carried on its books for the same assets.

55. For example, in October 2013, PPVA granted its partner an option to buy one of the two main Golden Gate oil fields for a mere $6.2 million, barely one-tenth of the value touted by PPVA for the same fields.

56. At the same time, the partners granted each other an option to buy the other party's share for $60 million, effectively meaning that the whole company was worth roughly $120 million (rather than $173 million).

57. One month later, though, Black Elk (another PPVA investment) reported in a public filing that it had obtained an option to buy the whole company for $60 million. This posed a problem for Platinum Management; Months later, a PPVA portfolio manager for Golden Gate told Nordlicht and Levy that a potential third party lender had brought up Black Elk's filing, saying "the issue is that it publicly discloses the value of the option and therefore pegs GGO [Golden Gate]'s value to $60M. This is ultimately a marketing issue that could be dealt with but something we should all be aware of."

58. Then, in August and September of 2014, PPVA in fact bought out its partner's 52% interest in Golden Gate not for $60 million, or $30 million, but a mere $3.2 million, with an additional $5.9 million contingent on achievement of production levels that Golden Gate had not come close to achieving. These actual option and sales prices belie Platinum Management's far higher valuations, including an enterprise valuation of at least $170 million it touted as of September 30, 2014. Third, even internally Platinum Management personnel frequently acknowledged Golden Gate was worth much less than claimed. In early 2012, Nordlicht initially scoffed at his portfolio manager's optimistic projections: "I cringe at the 1 billion PV-10 number [a measure of the present value of the oil reserves] as it doesn't mean anything . . . . when u have billion pv10 on fields that are worth 15 [$15 million] in sale now, it doesn't really mean much . . . ." Likewise, in late 2012, one of Platinum's project managers for Golden Gate wrote to Nordlicht that once Golden Gate, as a first step, had about seven wells producing at its two fields, the value would rise to $45 million. Nonetheless, at the end of 2013, when the drilling program had fallen far short even of that goal and Golden Gate was deeply in the red, Platinum Management increased PPVA's valuation of its interest to $173 million.

59. Tellingly, in early 2014, Nordlicht did not grant discretionary compensation to the portfolio managers responsible for Golden Gate based on the valuation that was on PPVA's books.

60. Fourth, Platinum Management took steps to mislead third parties who evaluated Golden Gate's reserves and the value of PPVA's interest in the company. Those third parties were largely at Platinum Management's mercy, for they relied upon Platinum Management and Golden Gate for virtually all of the inputs used in their calculations. For example, Platinum Management retained an independent valuation expert to buttress its own ultimate valuations, but

the valuation expert's quarterly reports repeatedly contained multiple false statements, obtained from Platinum Management, overstating the number of producing wells and the volume of oil production.

61. When Platinum Management considered having Black Elk buy PPVA's interest in Golden Gate, an independent engineering firm chosen by Black Elk made preliminary estimates that valued Golden Gate's reserves at about 10% of the estimates made by the engineering firm retained by Golden Gate. In particular, Black Elk's engineering firm found that most of the reserves should be characterized as merely "probable" rather than as "proven" – a critical difference since classifying reserves as proven rather than probable would have a positive effect on PPVA's interest in Golden Gate. Nordlicht ordered that those lower estimates be ignored.

62. Although Golden Gate's chosen engineering firm was willing to characterize more reserves as proven, that firm ultimately determined that it could no longer produce reserve reports for Golden Gate based on the company's pattern of making unrealistic projections of future well completions and production.

63. Overall, Platinum Management and Nordlicht's words and conduct, including the exceedingly small consideration paid to obtain a larger equity stake in Golden Gate, and the decision to hold on to the Golden Gate asset in the throes of deep liquidity crises, reflect that Nordlicht understood that the valuations he was continuing to use for PPVA's balance sheet did not accurately reflect the lesser realizable value reflected by Platinum Management's negative experiences in attempting to develop profitable wells.

64. Platinum Management's and Nordlicht's recklessly or knowingly inflated valuation of PPVA's interest in Golden Gate was material to the fund's overall valuation. For example, the $3.2 million PPVA paid for the remaining 52% interest in Golden Gate in

September 2014 implied an enterprise value of about $6.2 million for the whole company. Meanwhile, as of December 31, 2014, PPVA valued Golden Gate at $140 million. Deducting the difference of $134 million from the fund's overall $872 million in "investments in securities" as of the end of 2014 would reduce that line item on its balance sheet by 16%. Likewise, the $134 million represented approximately 13% of PPVA's overall AUM of $1.04 billion as of the end of 2014.

65. By failing to adjust Golden Gate's valuation to match reality, Nordlicht and Platinum Management inflated the management and incentive fees they received based on that inflated valuation.

66. Meanwhile, Platinum Management responded to investor skepticism about Golden Gate by misleading at least one investor who raised repeated concerns about PPVA's energy positions and their valuation. On March 28, 2014, investor relations official Mann provided this investor with a report about Golden Gate and Black Elk "that we have just created for investors who would like to know more about the two positions." In fact, however, the report was replete with misstatements exaggerating Golden Gate's performance. It included charts, not labeled as either actual or projected, showing Golden Gate's first quarter revenues as $4.6 million. In fact, information readily available to Platinum showed that Golden Gate's revenue for the first quarter (then almost entirely concluded) was less than 5% of the reported figure: $229,000.

67. Moreover, focusing just on revenues was misleading, because due to high operating costs Golden Gate had a net operating loss of $100,000 for Q1 2014. The same report reported Q1 2014 production as 508 barrels per day, when in fact net production for the quarter was less than 30 barrels per day. The report also vastly overstated probable reserves, pegging

them at 16 million barrels, when the most recent engineering reserve report then available showed only 6 million barrels of probable reserves. The report also said that "Overall PPVA has lent less than $18 million to GGO." In fact, as of December 31, 2013, the amount lent was $18.4 million, and after further lending in January and February of 2014 the total outstanding stood at $21.8 million.

68. These misstatements built upon Mann's statement to the same investor two days earlier, after speaking with Nordlicht, that Nordlicht had changed his mind about combining Golden Gate with Black Elk "since Golden Gate has been doing very well since then" – at a time when the project was in fact losing money and producing almost no oil.

2014: Growing Liquidity Crises and the Ensuing Black Elk Fraud

69. By 2014, PPVA's liquidity crisis had worsened. SanFilippo sent Nordlicht and Landesman an email on February 5, 2014, attaching a chart entitled "December 31 Redemption Summary" that highlighted approximately $14 million in redemptions and other monies still owing to investors based on their December 31 redemption requests. Indeed, under the PPMs, payment was required within 30 days and so this amount was overdue. The same chart indicated that other, apparently preferred, investors, had been paid over $22,325,000 in connection with the same quarterly redemption period.

70. Likewise, in a board meeting of the Directors of PPVA International held on March 12, 2014, in which Nordlicht and Landesman participated, Platinum Management acknowledged that the fund had experienced a greater number of redemptions than net capital contributions during 2013. Platinum Management also represented to the Board that 40% of the fund could be liquidated in 30 days, but it also represented that it was focusing on making the portfolio more liquid.

71. Despite these promises, when an investor emailed Landesman on April 29, 2014 asking when the wires would go out for the April 1 redemptions, payments for which were due no later than the next day, Landesman could not answer and instead forwarded the email to SanFilippo, asking: "What can I tell Jacques?"

72. Later on April 29, 2014, Nordlicht sent an email to San Filippo stating: "Start paying down reds [redemptions] as u can. Between Blake and ppbe (additional 10 million), shd have decent short term infusion. Hopefully some may 1 subs [subscriptions] show up as well. Have a few more outflows to discuss but this is obviously the priority." As indicated in Nordlicht's stated hope about subscriptions showing up, PPVA was heavily dependent on the infusion of new money from both subscriptions and other sources to meet its ongoing redemption obligations and lacked sufficient liquid assets in its portfolios to meet its redemption obligations.

73. A June 3, 2014 email from a Platinum employee to Nordlicht and others entitled "Cash Sheet" listed cash on hand of $96,000; "Pending Inflows" totaling $20,000,000; "Pending Outflows" totaling $16,750,000 and Redemptions of $500,000 for May and $9,500,000 for June, which resulted in a "Projected Cash" of negative $6,154,000. Nordlicht forwarded this email to another employee instructing him to: "Take June reds off the list," suggesting that they were unable to meet the pending June redemptions of $9,500,000 due to cash flow problems.

74. On June 16, 2014, Nordlicht emailed Landesman that the firm was in "code red" due to its inability to match redemptions with quarterly inflows of investor funds. Nordlicht stated:

> It can't go on like this or practically we will need to wind down. This is not a rhetoric thing, it's just not possible to manage net outflows of this magnitude. I think we can overcome this but this is code red, we can't go on with the status quo. ... We can't pay out 25 million in reds per quarter and have 5 come in...."

Landesman responded: "We are pushing hard, illiquidity a bigger hurdle than energy concentration...Need monetization/liquidity events in the fund..." Nordlicht replied: "....We just need to short term go crazy, get everyone focused, and long term try to come up with marketing pitches where we can raise even when we are illiquid."

75. In early 2014, these same liquidity problems caused Nordlicht to focus on Black Elk, PPVA's other large, illiquid energy investment.

76. Black Elk operated oil wells in the Gulf of Mexico, and PPVA was its principal lender. Platinum Management officials once considered the Black Elk position one of the strongest in PPVA's portfolio. At the end of 2012, Platinum Management's valuation of Black Elk represented 24% of PPVA's total assets. However, Black Elk's ambitious expansion plans ran into problems after a deadly 2012 explosion on an offshore rig prompted numerous official investigations. By 2014 its economic performance was mixed and it was struggling to pay its bills.

77. Meanwhile, as of early 2014, PPVA owned the vast majority of Black Elk's preferred shares, and a large portion of Black Elk's $150 million face value of outstanding senior secured notes. PPVA also had the power to control Black Elk's management, as admitted by Black Elk in its Form 10-K, as PPVA owned about 85% of the outstanding voting membership interests and had the authority to appoint and remove all Black Elk key personnel and determine management policies.[1]

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[1] "As of December 31, 2013, Platinum beneficially owned approximately 85% of our outstanding voting membership interests and approximately 66% of our total outstanding membership interests. As a result, and for as long as Platinum holds a membership interest in us, Platinum has the ability to remove and appoint key personnel, including all of our managers, and to determine and control our company and management policies, our financing arrangements, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters submitted to our members for approval, including potential mergers or acquisitions,

78. Moreover, PPVA aggressively exercised this power, through Nordlicht, as well as through Levy and Small who were also PPVA portfolio managers for Black Elk. They did so by appointing a majority of Black Elk's Board of Managers, appointing Shulse as CFO, repeatedly forcing the CEO to rescind his firing of that CFO and otherwise usurping the CEO's authority, making prolonged, almost weekly visits to Black Elk's Houston office, and controlling which of Black Elk's vendors were paid (if at all) and when. As the CEO later testified in Black Elk's bankruptcy proceeding, "Platinum was calling all of the financial shots. I would say as of February [2014], they were in complete control of, you know, essentially almost every daily activity and most certainly stayed on top on every penny in and every penny out."

79. Nordlicht decided to use this control over Black Elk not to try to turn around the company's business, but to plunder its assets for the benefit of PPVA and its affiliates, by getting repayment of most or all of approximately $110 million in Black Elk preferred shares held by those entities. A key reason was to stave off PPVA's liquidity crisis. Nordlicht acknowledged the liquidity crisis in vivid terms in an email to Small on March 17, 2014:

> This is also a week I need to figure out how to restructure and raise money to pay back 110 million of preferred which if unsuccessful, wd be the end of the fund. This 'liquidity' crunch was caused by our mismanagement –yours David and I – of the black elk position so I will multitask and also address your concerns but forgive me if I am a little distracted. I have been up until 3 am for the last two weeks working through this issue.

80. In 2014, Black Elk agreed to sell much of its prime assets to Renaissance Offshore, LLC. Platinum Management, Nordlicht, Levy and Small schemed to divert the proceeds from that sale to redeem preferred shares, most of which were held by PPVA and affiliated funds. However, the Black Elk note indenture required that such proceeds be paid first

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asset sales and other significant corporate transactions. As a controlling member, Platinum could make decisions that may conflict with noteholders' interests."

to the noteholders, and many of the notes were held by non-Platinum parties. So the Platinum parties thus devised a scheme to amend the note indenture to authorize that proceeds of the Renaissance sale be paid to holders of Black Elk Class E preferred shareholders, mostly PPVA, PPCO and two other affiliated funds.

81. The problem for Platinum was that a majority vote of noteholders was required to amend the indenture. Platinum controlled a majority of the notes, but it could not vote. As the consent solicitation later recited, "Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the majority." Moreover, independent noteholders would have no reason to vote for such an amendment, as it would divert the proceeds of the sale of key Black Elk assets to parties junior to themselves.

82. Therefore, Platinum personnel devised a scheme to obtain the necessary consents in a manner that deceived independent noteholders. Specifically, Nordlicht, Small and Levy worked to transfer the Black Elk notes held by PPVA to parties he and Small called "friendlies."

83. In a March 11, 2014 email, Nordlicht wrote to Shulse, Levy, Small and another individual, that "We are likely to have friendlies buy the bonds as of tomorrow."

84. Two days later, Shulse sought to benefit from his support for this effort, asking for "a substantial bonus, 1% of the amount of preferred's actually paid back to Platinum." He added, "Platinum getting its money out of Black Elk is a good thing for Platinum and it should be a good thing for me as well."

85. At one point, the plan was to quietly get pro-Platinum parties representing a majority of the notes to sign consents, without consulting independent noteholders. However, the note indenture trustee resisted, insisting on a formal consent solicitation process. As Shulse

explained in an email to Nordlicht, Small and Levy: "they don't trust our consents are valid because we have received a default notice in the past 60 days and we have the behind the scenes process with various dates on our consents."

86. Nordlicht's response to the idea of an open consent solicitation was a vehement no.

87. Shulse, showing a complete understanding of and support for Platinum's scheme to control a majority of the notes, supported the solicitation: "the quickest way is to do the formal solicitation . . . get our 51% in order . . . vote it through the DTC/BNY agents and end it." He added, "why are we afraid of an open solicitation? Probably going to avoid a lawsuit and if we have the bonds we say we do, the process ends as soon as we get over the number?"

88. On May 12, 2014, Shulse sent an email to Levy, Small, and Nordlicht suggesting they slip an announcement regarding the amendment to the indenture "in with the 10Q filing so it has a chance to get lost and not seem like such a big deal."

89. Nordlicht, Levy and Small eventually decided to pursue a formal consent solicitation, albeit a rigged one. Crucial to this effort was the transfer of a large number of notes from PPVA and its affiliates to BAM and its Beechwood affiliates. BAM was closely affiliated with Platinum Management through majority ownership by Nordlicht and other owners of Platinum Management, and through Nordlicht's influence over the entity thanks to the installation of Levy as CIO and many other Platinum officials in key positions at BAM. Indeed, in early 2014 Nordlicht told a third party that he planned to leave Platinum for BAM as of January 1, 2015.

90. All told, prior to the consent solicitation, PPVA transferred over $37 million in Black Elk notes to BAM and two related entities, BBIL SHIP and BBIL ULICO 2014 Trust, at

prices Nordlicht designated.

91. Numerous emails reflect Nordlicht's involvement: In a May 13, 2014 email, Nordlicht instructed that "Beechwood is buying 8 million black elk from PPVA. What is the best way to cross? Can we do it today please." Similarly, on June 23, 2014, he emailed: "I want to move/sell 10 million of black elk bonds to bbil the nomura account. Please take care of it." After confirming that BBIL was buying the bonds from PPVA, Nordlicht emailed instructions on July 1, 2014, to sell $7 million in Black Elk bonds from PPVA to BBIL SHIP at a price of 99.

92. Levy's position as BAM's CIO (along with the fact that many other Platinum Partners officials were also BAM officials) assured Nordlicht that the BAM-related entities would support the scheme. By July 3, the Platinum Partners-related funds and BAM-related entities held almost $100 million out of the $150 million in Black Elk notes, as reflected on a list shared by Nordlicht, Levy and Small.

93. Meanwhile, Nordlicht, Small, Shulse and Levy participated in the drafting of a document to be circulated to all noteholders, which contained two closely related parts. The first was a tender offer, which offered to buy back notes at par. The second part was a solicitation to consent to note indenture amendments, most notably including that the proceeds of the Renaissance sale would, after payment of any tendered notes, be payable to holders of preferred shares, who were disclosed to be mostly Platinum Partners-related entities.

94. During the drafting process, on July 3, Small circulated to Black Elk counsel a disingenuous deceptive hypothetical question about whether $5 million in notes owned by an affiliate had to be excluded from voting – in fact, PPVA and its affiliates held more than $98 million in notes. Still, counsel confirmed that even Small's hypothetical $5 million in affiliate-held notes would have to be disregarded in the vote, and Small forwarded this finding to

Nordlicht and Levy.

95. Despite their knowing this key principle, the final consent solicitation contained this false representation:

> As of the date hereof, there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund, L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests, own approximately $18,321,000 principal amount of the outstanding Notes. Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, hold any Notes. (Emphasis added.)

The $18 million figure was a vast understatement, as it failed to disclose the $72 million in other notes held by PPVA affiliates and BAM-related related entities. Knowing the consent solicitation contained this falsehood, and that the vote was rigged, Small signed the Black Elk Board of Managers' authorization for Black Elk to conduct the consent solicitation, and to implement it should it be approved.

96. Also, while formally the solicitation preserved the priority of tendering noteholders, in reality the offer discouraged tenders by its unattractive terms. Because the notes were callable months later at par, tendering meant foregoing months of interest for no gain.

97. However, not tendering would be a mistake if the consent solicitation were approved. In the end, $11 million in notes were tendered by independent noteholders.

98. Platinum caused all of the notes held by its PPVA and its undisclosed affiliates, including PPCO and PPLO, and the Beechwood entities to vote in favor of the consent solicitation but without tendering. Levy was copied on the document by which Beechwood entities cast their votes in that manner, against their own interests as noteholders but in favor of the interests of preferred shares held by PPVA and affiliated funds.

99. Small signed the consent of Black Elk's board of managers which falsely recited that "the Company has received sufficient consents" to amend the indenture. On August 14, 2014, Black Elk falsely claimed in a press release that "holders of $110,565,000 principal amount of the Notes, or 73.71% of the Notes, had validly consented to the Consent Solicitation." (Emphasis added.) On August 21, Black Elk issued a Form 8-K announcing that it had received "the requisite consents" of noteholders' to, among other things, apply the proceeds from the recently-concluded Renaissance sale to retire the tendered notes and use the remaining proceeds to repurchase preferred equity issued by Black Elk.

100. On August 18, Small, from his Platinum email address, but purporting to speak for the Black Elk board of managers, directed Shulse to wire $70 million in partial payment of Class E preferred shareholders. Levy meanwhile sent Shulse specific wire instructions for sending to PPVA and other designated parties most of the proceeds from Black Elk's sale of assets to Renaissance. This included three other Platinum Partners funds, and one third party to which Platinum had sold preferred shares and was subject to a put repurchase obligation. The $20 million of Black Elk sale proceeds sent to that party extinguished that obligation. After Nordlicht pressed Shulse to "send these wires out already," Shulse complied with the directions.

101. All told, from August 18 to 21, 2014, Black Elk wired approximately $98 million in Renaissance sale proceeds for the benefit of PPVA and its affiliated funds, including PPCO and PPLO. One other such fund, PPBE, set up specifically to invest in Black Elk notes, distributed its share of those proceeds to its investors. Among those investors were Levy and Small, who received $256,678 and $102,671, respectively, thus benefiting directly from the Black Elk fraud.

102. PPVA investors received various communications from Platinum Management under Nordlicht's direction, such as financial statements, marketing materials and monthly reports that reported fund performance based, in part, on the Black Elk fraudulent note scheme. However, they omitted the material fact that the proceeds paid to PPVA on account of its Black Elk Class E preferred shares were derived based on the above-referenced fraudulent conduct.

Late 2014: Misleading Investors about PPVA's Borrowing to Cope with Liquidity Constraints

103. Obtaining the Black Elk proceeds by itself was not enough to stanch PPVA's liquidity problems. Accordingly, starting at least in July 2014, the fund began incurring short-term loans, a principal purpose of which to ease liquidity constraints, including paying redemptions.

104. On July 1, PPVA borrowed $10 million from a group of insiders for six months, at a 19% annual interest rate. ("July 2014 Loan"). This wasn't enough, and in September, PPVA borrowed another $50 million, at 16% interest. The vehicles were two notes by PPVA in favor of over 40 lender-participants investors, again including many insiders. The notes had a three-year term, but in fact each participating lender could elect to get back its principal after six months. These notes were marketed and referred to internally as the "PPNE Loan," *i.e.*, Platinum Partners Northstar Energy, creating the impression that the funds were to be used to invest in Northstar, a recent addition to PPVA's energy portfolio which was in the process of acquiring the remaining assets of Black Elk.

105. All told, PPVA borrowed $95 million from various parties during 2014 at 16-19% annual interest, including the July 2014 Loan and the PPNE Loan, and as of the end of 2014 more than $40 million in overall loan principal remained outstanding. PPVA also paid over $3

million in interest on these loans, draining value from the fund and further squeezing its capacity to pay redemptions.

106. In late 2014, Platinum Management continued to market PPVA to prospective investors and to make reports to existing investors. However, it misled prospective and existing investors by not revealing that PPVA was engaged in heavy short-term borrowing.

107. Still, the issue of disclosure was forced upon Platinum Management toward the end of the year. PPVA's auditor was still working on its audit of the fund's 2013 financial statements – the same audit that would conclude with a markdown of one of PPVA's large illiquid positions and a finding that Platinum Management's valuation process represented a material weakness. In preparing the section on subsequent events, the auditor asked about loans incurred by the funds. When the July 2014 Loan and PPNE Loan were produced, the auditor inquired as to their purpose. PPVA CFO SanFilippo misled the auditor, as well as investors who received the resulting audited financial statements, about the purpose of those loans, in order to conceal PPVA's pressing liquidity needs.

108. All internal Platinum Management documents addressing auditor questions and draft disclosures said that these loans were incurred for liquidity needs. When Levy explained the PPNE Loan internally to SanFilippo, he first wrote its purpose was "liquidity to complete a transaction," but he changed this a minute later to "Ppne is a general obligation of PPVA taken for liquidity." SanFilippo ignored this change and used the more benign first version, telling the auditor it was for "liquidity to complete a specific transaction."

109. Even worse, PPVA's later submission to the auditor of a financial statement disclosure about the loans – sent by an assistant and copying SanFilippo – eliminated any reference to liquidity. The initial draft, not sent to the auditor, listed the two loans separately and

in each case said the loan "dealt with liquidity restraints." The version sent to the auditor, however, which appeared in the final financial statement notes, combined the loans into a single disclosure, saying that PPVA "entered into multiple financial transactions . . . in order to complete multiple investment transactions."

110. In this manner, SanFilippo helped to misstate the purpose of these sizable short-term, high-interest loans and conceal the fund's significant liquidity constraints – which would have been a major red flag for PPVA investors.

111. In addition, PPVA's 2013 audited financials were not released until February 11, 2015, 287 days following the April 30, 2014 due date. This prolonged delay caused Platinum Management to violate the custody rule promulgated under the Advisers Act (the "Custody Rule"). Under the Custody Rule, Platinum Management was required to either engage an independent public accountant to conduct a surprise examination once per year, or to circulate audited financial statements to investors within 120 days of the end of its fiscal year. Platinum Management did neither for the fiscal years 2013, 2014 and 2015.

<u>2015: PPVA's Liquidity Crisis Deepens, as does the Misleading of Investors</u>

112. Even after having unlawfully extracted nearly $100 million out of its Black Elk holding, and having borrowed heavily at high interest rates, PPVA's liquidity troubles continued, as current investors sought to redeem investments and Platinum Management scrambled for new investor money to replace the amounts being withdrawn.

113. In addition to trying to raise new money to keep their fund going, Platinum Management and Nordlicht embarked on a concerted effort to persuade people not to go through with their redemption requests.

114. Multiple people at Platinum Management participated in that effort, including Landesman, who had substantial responsibility for investor communications for PPVA, and Mann, who worked in Platinum Management's investor relations department.

115. For example, in a January 23, 2015 email chain discussing an upcoming redemption request for the end of the first quarter, a Platinum employee told Landesman that he had just gotten a $19 million full redemption request from an investor. Landesman replied that he would "try to avert, directly tied into lack of November statements."

116. As of January 30, 2015, a PPVA spreadsheet reflected that Landesman himself had made a $6,000,000 redemption request in the prior quarter (12/31/2014), and was waiting to get paid.

117. On March 3, 2015, Nordlicht forwarded an investor's contact information to Landesman, saying, "I don't trust myself, I feel I came off really defensive with Leon. I think u give us best possibility to try and keep him." Nordlicht provided positive talking points, including "tremendous optionality that cd produce some lumpy positive monthly returns in any one month," but did not mention any disclosures regarding liquidity problems or their difficulties in meeting redemption obligations. Landesman replied, "I'll handle it."

118. By mid-March 2015, Nordlicht, Landesman and other senior Platinum Partners officials schemed to meet a sudden wave of over $70 million in redemptions by pressing redeeming investors to cancel those redemptions or at least defer them one quarter, and to launch an aggressive push for new investment money, all while concealing PPVA's liquidity crisis. Their pitch focused on anticipated investment gains in the following month, while omitting the firm's significant liquidity crisis, which would obviously scare new investors and people looking to redeem.

119. The plan to mislead investors is illustrated by an email exchange that same month in which Nordlicht and another employee, copying Landesman, were crafting a response to an investor who had made a redemption request. The draft response stated: "By the way, we have significant interest on the subscription side for April which we expect to be our best month since the fund was founded. Therefore, we are limiting net inflows to 5% of the fund in April. On the off chance you decided to recant or defer your withdrawal to June 30, please let us know by April 1st so that we can process the subscriptions in a timely manner. Regards…"

120. Given the fund's financial straits, capping new investments does not appear to have been a sound management strategy. Instead, it appears to have been a stock marketing ploy to make the fund appear more desirable. This is particularly so because subscriptions effective on January 1, February 1 and March 1, 2015 totaled only approximately $14 million, making the possibility of reaching 5% on April 1 (let alone having to implement the cap) remote.

121. Landesman himself called investors in an attempt to obtain deferrals of March 31, 2015 redemptions. At the time of those calls, he was aware that there wasn't even enough cash to finish paying the December 31, 2014, redemptions that had been made, including by having been on emails in which a Platinum employee pressed Nordlicht with respect to an overdue redemption and Nordlicht eventually replied: "Working on it." After speaking with Landesman, one investor canceled half its redemption, telling Landesman that it was based on "your message of the April rebalancing of PPVA."

122. On March 31, 2015, Landesman hosted Platinum Partners' quarterly investor conference call. In introducing the call, Landesman provided a materially misleading explanation for why the call had been moved up to March 31 – an odd date for a quarterly conference call as the quarter-end performance data, usually the main purpose for such calls,

was still unavailable. Landesman told investors that the call had been moved up because Passover fell in early April. However, as Landesman knew, the real reason for the early conference call was that Platinum Management had decided to meet the liquidity crisis by spreading word of their expected April performance gain early enough to induce deferrals of redemptions and new subscriptions by early April, when they still could count as effective as of March 31.

123. During the same quarterly investor call, Nordlicht falsely claimed "we have not really gone out and tried to market aggressively based on the month that we're having," touted their expected April gain, and omitted any mention of PPVA's liquidity crisis. Finally, Nordlicht repeated the marketing ploy that net subscriptions would be capped at 5% of the fund.

124. On April 2, 2015, Nordlicht emailed others at Platinum Partners asking if any new "subs" [subscriptions] cleared today, instructing that "[n]ext uses of capital for ppva" should be to pay back individuals who had lent money to the fund, including insiders such as Landesman. For Landesman, the promised payment was $1 million. When he learned that he would be one of the persons getting repaid when new money came in, Landesman replied, "Back at ya."

125. Five days later, on April 7, 2015, Nordlicht and Landesman learned of another investor who, despite another employee's efforts to reach the investor to try to change his mind, was redeeming his group's PPVA investment. Later that day, Landesman sent the investor an email saying he was sorry that the investor was "still redeeming," and adding that he hoped that they would one day be worthy of "your reinvestment." Landesman forwarded this email to Nordlicht with the words "Hail Mary time."

126. Meanwhile, PPVA's monthly marketing materials for April 2015 continued to represent that there was no lockup and withdrawals were "Quarterly, 60 day notice required,"

without disclosing the fund's struggles paying redemptions and the resulting efforts to dissuade investors from redeeming.

127. Despite the various Platinum Defendants' efforts to reduce the amount of redemptions that would be effective March 31, 2015 and payable April 30, 2015, most of PPVA's redemptions that became effective on March 31, 2015 were not paid on April 30 as required, nor were they paid as a group at any one time. Rather, they were paid selectively, from April through July.

128. In late May, an investor who was still waiting to receive payment of his redemption pointedly asked: "To address our concerns, I ask that you be fully transparent with respect to timing of the redemption, including why PPVA does not simply sell some liquid securities to fund the redemption." Nordlicht responded: "There are good reasons we do not liquidate trading positions but that is another story and doesn't excuse what happened. It was really Murphy's law in terms of a few closings getting postponed or dragged out at the same time. In any event, I am hopeful for tomorrow." Nordlicht's response omitted material information, such as that the fund had been having trouble paying redemptions for more than one quarter, and that one of its large portfolio company holdings was overvalued.

129. As the end of the next quarter approached in June, Platinum once again worked to execute on its continued scheme to stave off redemptions. Almost $50 million in June 30, 2015 redemptions came due by July 31. But payments were made at various times from late-August until mid-October, with some redeeming investors not being paid at all.

130. Landesman persuaded several investors to postpone their redemptions to September 2015, without disclosing PPVA's liquidity crisis. Indeed, he assured one investor,

who expressed hope for a 12% annual return for 2015 and 15% for 2016-19, "all of that is doable," without mentioning that in fact PPVA was essentially out of cash.

131. On July 1, 2015, PPVA started the day with $1,010,000 and had scheduled outflows totaling $991,000, leaving a net of $20,000. The scheduled outflows did not include any redemption obligations.

132. PPVA's financial condition at the time was so perilous that Platinum Management principals made loans to allow PPVA to meet certain of its financial obligations. For example, as of July 24, 2015, the PPVA master fund bank account was overdrawn $1.5 million. That day, a Platinum Management principal wired $1.65 million into the Platinum Management bank account, and that $1.65 million was transferred that same day into the PPVA master fund account. From there, the money was used for various PPVA obligations, including $50,000 that was transferred to the PPVA (USA) account to fund payments to two investors.

133. In other words, in July 2015, Platinum Management was resorting to obtaining short-term loans from its principals even to selectively fund $50,000 worth of redemption obligations while other redemption requests remained unpaid.

134. Consistent with prior months' marketing materials, PPVA's July 2015 marketing materials made no mention of any liquidity or redemption issues and instead represented that there was no lockup and that withdrawals were "Quarterly, 60 days' notice required."

135. Even as unpaid redeeming investors pressed for explanations, Platinum employees held back on revealing the whole truth. For example, in mid-August 2015, one investor who was still waiting for payment on his June 30, 2015, redemption asked in an email received by Landesman and Mann whether any outstanding redemptions have been paid. He

received a misleading response from another Platinum employee, on which both Landesman and Mann were copied: "We endeavor to treat all investors equally. We are open to providing priority to investors who show severe hardship, but very much prefer to make simultaneous payments to all investors at the same time." By the time of that response, however, twelve redemptions for June 30 had been paid out, at least in part.

136. Throughout this period, Mann was aware of PPVA's liquidity problems because he prepared internal reports on, among other things, dates and amounts of redemptions and subscriptions, and was also aware of investor complaints about late redemptions and pointed questions about PPVA's liquidity. Despite that knowledge, he continued to communicate with investors about processing new redemptions and deferrals without disclosing the full picture of the fund's troubles.

137. Mann also followed Platinum Management's practices of selective redemptions, pressing Nordlicht to provide payment to an investor on hardship grounds while ignoring emails of another investor who inquired about the status of his own pending redemption request.

PPVA Borrows from PPCO, Violating the Funds' Rules Made Known to Investors

138. As PPVA's liquidity crisis deepened, Platinum Management turned to yet another source for desperately needed cash: PPCO. The PPMs of both PPVA and PPCO prohibited the lending or borrowing of funds from one to the other for any purposes other than to facilitate an investment. Starting in October 2014, however, the two funds ignored this restriction, and PPCO frequently extended large loans at least in part to help ease PPVA's cash crisis. Nordlicht readily executed this scheme, since he was the co-CIO of both funds and essentially controlled their affairs, treating their funds as a single "stew."

139. In October 2014, PPVA borrowed $10 million from PPCO at 16% interest. This principal was paid back by the end of 2014. In 2015 the two funds entered into a $25 million revolving credit arrangement. The note evidencing this was dated as of January 1, 2015, and on or about that date PPVA borrowed another $18 million. The outstanding principal declined and then rose again, so that by late August, it exceeded $12 million.

140. From August 1 to August 20, 2015, alone, a net $3.35 million flowed from PPCO to PPVA.

141. Toward the end of August 2015, however, Nordlicht briefly reversed course. From August 21 to August 31, 2015, with PPCO facing its own unpaid redemption requests, PPVA transferred $2.275 million from its master fund account to PPCO (and PPCO transferred back only $15,000). During that same period, PPCO paid outstanding June 30, 2015 redemptions totaling approximately $3.7 million. At the same time that PPVA was helping PPCO pay its outstanding redemptions, PPVA as of the end of September 1 had at least fourteen overdue redemptions of its own totaling at least $10 million. It was not until mid-October that Platinum Management completed paying those fourteen redemptions.

142. Nordlicht then reversed course again. From September 9 through 30, PPVA's ability to pay redemptions was aided by $3.7 million in new funding from PPCO to PPVA.

143. Still, the September quarter brought continued redemption strains. Of the approximately 57 redemptions that became effective on September 30, 2015, most have never been paid, although 17 investors did receive preferential payments for some or all of their redemptions, in one form or another.

144. On September 30, 2015, PPVA's principal bank accounts were again nearly empty and the fund faced approximately $20 million in new net redemptions and repayment of a short-term loan of $7.2 million.

145. That same day, two related foreign funds subscribed to PPCO by wiring $6.5 million and $1.2 million, respectively, into a PPCO account.

146. The next day, October 1, 2015, those subscribers' funds were transferred to a PPCO Master Fund account at the same bank. From there, $7.3 million of the new PPCO investors' money was wired to the PPVA Master Fund bank account at a different bank. PPVA used that money to repay its outstanding loan.

147. Thus, within 24 hours of investing $7 million in PPCO, these investors' monies had, without their knowledge or consent, been diverted to a separate fund, PPVA, to pay off a short-term loan.

148. The $7 million was then added to the outstanding principal owed by PPCO to PPVA on its revolving loan. This "loan" contradicted representations made in the PPMs of both funds because PPVA was borrowing, and PPCO was lending, money to handle a short-term cash crunch rather than for the permitted purposes of making investments.

149. Meanwhile, PPVA's monthly marketing materials for September 2015 again provided no information on liquidity problems, and repeated that there was no lockup provision and that withdrawals were "Quarterly, 60 days' notice required."

150. On September 16, 2015, PPVA finally provided investors with audited financials for the 2014 audit year, 139 days following the April 30, 2014 due date. This prolonged delay once again violated Platinum Management's obligations under the Custody Rule. Even worse, although the audited financials disclosed that PPVA had borrowed approximately $95 million

during 2014, they repeated the misleading statement from the prior year's audit that the purpose of those loans was to complete "investment transactions."

Investors Transfer Interests from PPVA to PPCO, But PPCO Gets No Cash

151. In October and November 2015, Platinum Management, Platinum Credit and Nordlicht also misused PPCO to help PPVA by engaging in preferential, cashless redemptions of some PPVA investors and cashless transfers of those investors' interests into PPCO.

152. In an attempt to redeem certain PPVA investors without having to pay out cash, Platinum Management caused them to execute PPCO subscription agreements, together, in most cases, with detailed wire instructions to Platinum Management's fund administrator authorizing that the proceeds of their PPVA redemptions be wired to a designated PPCO bank account. One other investor did not submit wire instructions, but nonetheless gave the direction to "sell/redeem" $500,000 from PPVA and "invest the redemption proceeds" into PPCO.

153. In fact, however, the signed wire instructions that had been provided to the fund administrator were not followed: no transfers of funds ever occurred. Instead, the amounts – totaling over $3 million – were simply added to the balance of PPVA's outstanding revolving line of credit owed to PPCO.

154. Such cashless redemptions harmed, and were a breach of fiduciary duty to, both PPCO and PPVA. This new PPCO "loan" to PPVA clearly was not a loan for purposes of investment, as narrowly permitted by PPCO's fund documents, and thus contradicted representations in PPCO's PPMs. And PPCO received no cash for these new subscriptions, merely a promise to pay by an affiliated fund that lacked sufficient funds to meet its own redemption obligations. This left PPCO investors exposed to the risk presented by PPVA's illiquidity.

155. PPVA, too, was harmed, as it was forced to incur the obligation to pay high interest merely to facilitate redemptions from its own fund. Remaining PPVA investors were also harmed by what in effect were preferential redemptions, which allowed certain redeeming investors to escape from PPVA to the relatively healthier PPCO. Nonetheless, Platinum Management, Platinum Credit, Nordlicht and others ignored the blatant conflict of interest between PPCO and PPVA. Further, Nordlicht as co-CIO of the advisers to both PPVA and PPCO, caused PPCO and PPVA to act in a way that was potentially contrary to each of their own interests.

156. These were not the first cashless transfers from PPVA to PPCO. As early as October 2014, an investor wired instructions to redeem $15 million from PPVA and "use the proceeds of the redemption to subscribe" to PPCO "for the same amount of $15,000,000" effective December 31, 2014. Later, this was changed to a cashless transfer, which Platinum officials first thought to add to the PPNE Loan, and then decided to use as the basis for what became the new $25 million revolving note by PPVA to PPCO. The effect was the same: PPVA was shed of a $15 million investment interest and PPCO gained a $15 million investment interest for no cash, and just a promise to pay by PPVA.

157. In this earlier case, the failure to deal with the obvious conflict of interest between the two funds was blatant. PPCO's CFO wrote that "since the borrower is PPVA no need for risk and valuation to sign off as the CIO is obviously comfortable with the risk. David Levy can just approve the deal sheet and memo."

Late 2015 and 2016 – the Peaking of the Liquidity Crisis, New Misleading Communications with Investors and New Diversions of Funds

158. By the late fall of 2015, Platinum Management decided to address PPVA's liquidity problems by placing certain assets in a "side-pocket" that would prevent them from

being used as a basis for calculating the amount of redemptions an investor would be entitled to until the assert was sold. Still investors continued to be misled, and funds improperly diverted, even after this change occurred.

159. Nordlicht issued a letter dated November 23, 2015 stating that PPVA USA, via its investment in the PPVA Master Fund, "still holds substantial investments in the remaining illiquid assets which require additional time before the Master Fund can realize the value of those investments. Accordingly, the Investment Manager has a plan to segregate certain illiquid assets (and related liabilities) from the remainder of the assets in the portfolio (the 'Special Investments') in the interest of protecting investors and maximizing returns. …The Special Investments structure protects the Fund investors from being left holding a disproportionately high percentage of illiquid assets when redemptions are made by some investors." Nordlicht asked for the investors' consent to this "Special Investments" modification of the fund.

160. In a conference call in late November 2015 explaining this shift, Nordlicht stated that the existing fund "should quickly become very very liquid" and "I expect it to have ample liquidity," and "liquidity-wise, we're getting things back to normal and we expect to run it with ample liquidity . . . ." In the same investor call, Nordlicht also minimized the significance of the redemptions crisis PPVA was facing, saying, "this was not a redemption-driven type of move that we've made, and in fact we've had less redemptions than you would expect in a fund of our size. This was really a situation where it got to a point where we just had too many private equity positions. I don't feel comfortable paying out in cash at this time."

161. This was misleading, given that the fund was cash-strapped and had substantial past-due redemptions, a fact he omitted.

162. Moreover, contrary to Nordlicht's promise that the fund "should quickly become very very liquid" after illiquid assets were moved to the side-pocket, most investors were not paid redemptions even out of the existing fund. With a few selective exceptions, cash redemption payments ceased from late 2015 forward.

163. Meanwhile, on November 11, 2015, an investor who was waiting to receive payment on his September 2015 redemption of approximately $394,000 sent an email to Mann asking when his redemption would be paid. Mann replied: "[w]e hope to send it to you soon." However, during that same month another Platinum employee told the investor that Platinum could not return his investment because of liquidity issues, since liquidating their liquid holdings in order to pay him would leave remaining investors with too high a portion of the illiquid investments. Mann subsequently ignored a January 12, 2016, email from the investor asking when his redemption would be paid. To date, the investor has not received any portion of his PPVA investment back.

164. In mid-January 2016, one unpaid PPVA and PPCO investor emailed Platinum complaining: "I have asked already about a dozen times about money due to me from PPVA. …you have not paid me money that is due for 75 days. Every time I ask I am told a few more days. … Also PPNE [note interest payment] is supposed to pay at the start of the month and we are now at Jan 15 with no money. This was supposedly guaranteed by the fund." In a reply email from a Platinum Management employee, the investor was told that the PPNE interest payments would be made the following week and that they would have an answer for him on Monday when the overdue September 30 redemption would be paid.

165. The investor responded in part: "Nothing makes investors more jittery than not paying in a timely fashion. I told you that in my opinion holding up the PPCO payment in light

of the changes that you wanted to implement at PPVA was a big mistake. If in fact PPCO has nothing to do with PPVA than (sic) why was the PPCO delayed for 2 months."

166. The investor's email reflects Platinum Management's and Platinum Credit's failure to disclose the extensive intermingling of funds between the two funds to deal with both funds' liquidity problems.

167. In May 2016, with liquidity problems still not solved, Platinum Management, Platinum Credit, Nordlicht and Levy used BAM to essentially steal investor money to obtain cash needed for PPVA expenses.

168. Among its many transactions BAM made with Platinum Partners affiliates, was a $25 million participation interest in a term secured loan to a wholly-owned PPCO portfolio company named Credit Strategies LLC. The loan requires that Credit Strategies in effect apply proceeds either to its own debt obligations or to general corporate purposes.

169. In May, a Platinum portfolio manager (copying Nordlicht and Levy) emailed a request for $1.5 million in funding under the note for purposes of "working capital." The request was signed by Levy, as co-CIO for Credit Strategies. On May 11, BAM approved the funding instructed its bank to wire the money to Credit Strategies' bank account.

170. However, the money was not used by Credit Strategies for working capital as required, but was diverted to a separate fund, PPVA.

171. First, Credit Strategies wired approximately $1.5 million to the parent PPCO fund's account. From there, PPCO wired the money to its investment manager, Platinum Credit. Platinum Credit, in turn, wired approximately the same amount to Platinum Management.

172. Platinum Management then wired the money to a PPVA bank account that at the time was overdrawn by about $1.54 million because of payments the funds that had been made to prime brokers.

173. Furthermore, in June 2016, with PPVA's liquidity crisis peaking, SanFilippo helped Nordlicht break Platinum Management's oft-repeated promise to investors that overdue redemptions would be paid once several illiquid positions were monetized. As an example of this promise, Mann told one investor in May 2016 that "we anticipate paying/wiring the whole 12/31 redemption class their funds (minus 10% audit holdback) together sometime at the end of June or beginning of July (or maybe earlier). This is based on our current liquidity and the anticipated sale of two companies."

174. Meanwhile, Nordlicht helped to close a transaction involving one portfolio company. As a result, on June 9, 2016, PPVA received $37 million in proceeds. But one of those funds were paid that month to investors. Instead, $11 million of these proceeds were invested in a different private company – the same type of illiquid investment that had gotten PPVA into a liquidity crisis in the first place. And, among other uses of the funds, Nordlicht emailed SanFilippo and directed him to make various payments totaling approximately $900,000 to a handful of parties, mostly insiders. By the end of the month, there was $31,000 left in the PPVA Master Fund account. This use of the proceeds contradicted the repeated promises by Platinum Management that such major monetizing events would fund large-scale redemption payments.

PPVA and PPCO Cease Taking on New Investors

175. In June 2016, the FBI executed a search warrant at Platinum Management's offices, and the U.S. Attorney's Office for the Southern District of New York filed criminal charges against one of Platinum Partners' co-owner, in connection with a bribery scheme in

which he is alleged to have paid kickbacks to a New York City Correction Officer's Union official to obtain the union's retirement fund investments in PPVA during the time it was experiencing its liquidity crisis.

176. In the wake of those events, Nordlicht announced to investors that the PPVA fund would stop taking in new money and fund investments would gradually be monetized. .

177. On July 18, 2016, following consultations between Commission staff and counsel for Platinum Partners and its affiliates, the PPVA, PPCO, and PPLO funds retained Guidepost Solutions LLC ("Guidepost") as an "Independent Oversight Advisor," giving the firm access to information and employees and advance notice of major transactions concerning all of Platinum Partners' funds.

178. On July 20, 2016, Platinum circulated to investors Guidepost's letter announcing its appointment "to assist the Managers with the development and implementation of a plan for the orderly liquidation of the Funds under management."

179. On July 28, 2016, a petition was filed in the Grand Court of the Cayman Islands, commencing an involuntary liquidation proceeding and seeking the appointment of Matthew Wright ("Wright") and Christopher Kennedy ("Kennedy") of RHSW (Cayman Limited) as Joint Official Liquidators for the PPVA International feeder fund.

180. On August 25, 2016, the Cayman Court appointed Wright and Kennedy as joint provisional liquidators of the PPVA master fund. An involuntary liquidation proceeding was commenced against PPVA in the Cayman Islands, where the PPVA master fund and international feeder fund are incorporated. Those PPVA funds are now under the supervision of a court-appointed liquidator. On October 19, 2016, the Cayman liquidator commenced an

ancillary bankruptcy proceeding in the United States, pursuant to Chapter 15 of the United States Bankruptcy Code.

181. The PPCO and PPLO funds remained under the informal monitoring of Guidepost.

182. On October 26, 2016, the Litigation Trustee for Black Elk, a Debtor in Bankruptcy, commenced an Adversary Proceeding against PPVA, PPCO, and PPLO, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, based on claims arising from the fraudulent consent scheme alleged above. On the same day, the Bankruptcy Court issued a TRO imposing certain restrictions on PPCO and PPLO's assets. A hearing for a related application for injunctive relief has been set for January 12, 2017.

183. In November 2016, in connection with the Black Elk trustee's request for preliminary relief in its adversary proceeding, the testimony of various individuals was taken.

184. On November 29, 2016, Levy was deposed by the Trustee and asserted his Fifth Amendment right against self-incrimination, refusing to answer any questions concerning the Black Elk note transactions and any other Platinum matters.

185. On November 30, 2016, Nordlicht was deposed by the Trustee and asserted his Fifth Amendment right against self-incrimination, refusing to answer any questions regarding the Black Elk note transactions and any other Platinum matters.

186. On November 30, 2016, PPCO's auditor advised PPCO that it had suspended work on all outstanding engagements and that PPCO should retain a new accounting firm to replace it.

FIRST CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit and Nordlicht)
Violations of Sections 206(1) and 206(2) of the Advisers Act
and Rule 206(4)-8 thereunder

187. The Commission realleges and incorporates paragraphs 1 to 186 by reference as if fully set forth herein.

188. From at least 2012 through the present, Defendants Platinum Management, Platinum Credit and Nordlicht, investment advisers, directly or indirectly, singly or in concert, by the use of the means and instruments of transportation or communication in interstate commerce, and of the mails, employed and are employing devices, schemes and artifices to defraud investors, and have engaged and are engaging in transactions, practices and courses of business which operate as fraud and deceit upon these investors.

189. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit and Nordlicht have violated, are violating and, unless restrained and enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

SECOND CLAIM FOR RELIEF
(Against Nordlicht)
Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act

190. The Commission realleges and incorporates paragraphs 1 to 189 by reference as if fully set forth herein.

191. From at least 2012 through the present, by engaging in the conduct described above, and pursuant to Section 209(f) of the Advisers Act, 15 U.S.C. § 80b-9(f), Defendant Nordlicht, in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Management's

and Platinum Credit's violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

192. Unless restrained and enjoined, Defendant Nordlicht will again aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

THIRD CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit and Nordlicht)
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

193. The Commission realleges and incorporates paragraphs 1 to 192 by reference as if fully set forth herein.

194. From at least 2012 through the present, Platinum Management, Platinum Credit and Nordlicht also served as investment advisers to a pooled investment vehicle, and (a) made untrue statements of material fact or omitted to state a material fact, necessary to make the statements made, in the light of circumstances under which they were made, not misleading, to an investor in the pooled investment vehicle; and (b) engaged in an act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

195. By engaging in the foregoing conduct, Defendants Platinum Management, Platinum Credit and Nordlicht have violated, are violating and, unless restrained and enjoined, will continue to violate 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

FOURTH CLAIM FOR RELIEF
(Against Levy, Small, Landesman, Mann, SanFilippo and Nordlicht)
Aiding and Abetting Violations of Section 206(4)
of the Advisers Act and Rule 206(4)-8 Thereunder

196. The Commission realleges and incorporates paragraphs 1 to 195 by reference as if fully set forth herein.

197. From at least 2012 through the present, by engaging in the conduct described above, and pursuant to Section 209(f) of the Advisers Act [15 U.S.C. § 80b-9(f)], Defendants Levy, Small, Landesman, Mann, SanFilippo, and Nordlicht in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Management's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and Defendant Nordlicht, in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Credit's Management's violations of Sections 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

198. Unless restrained and enjoined, Defendants Levy, Small and Nordlicht will again aid and abet violations of Sections 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

FIFTH CLAIM FOR RELIEF
(Against Platinum Management)
Violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 Thereunder

199. The Commission realleges and incorporates paragraphs 1 to 198 by reference as if fully set forth herein.

200. By engaging in the conduct described above, Platinum Management willfully violated Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), which prohibits a registered investment adviser from engaging in fraudulent, deceptive or manipulative conduct, and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2, which requires an adviser to take certain enumerated steps to safeguard client assets over which it has custody.

201. By reason of the foregoing, Platinum Management violated, is violating and, unless restrained and enjoined, will continue to violate Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2.

SIXTH CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo)
Violations of Section 17(a) of the Securities Act

202. The Commission realleges and incorporates paragraphs 1 to 201 by reference as if fully set forth herein.

203. Interests in PPVA and PPCO are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

204. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo, directly or indirectly, singly or in concert, in the offer or sale of securities, knowingly, recklessly or negligently, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, (a) have employed, are employing, or are about to employ, devices, schemes, or artifices to defraud; (b) have made untrue statements of material fact, or have omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) have engaged, are engaging, or are about to engage in transactions, practices, or courses of business which operate, operated, or would operate as a fraud or deceit upon the purchasers of securities.

205. By reason of the foregoing, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo have violated, are violating, and unless restrained and enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SEVENTH CLAIM FOR RELIEF
(Against Mann)
Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act

206. The Commission realleges and incorporates paragraphs 1 through 205 by reference as if fully set forth herein.

207. Shares of PPVA and PPCO are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

208. By engaging in the conduct described above, Defendant Mann, directly or indirectly, singly or in concert, in the offer or sale of securities, knowingly, recklessly or negligently, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, (a) has employed, are employing, or are about to employ, devices, schemes, or artifices to defraud; and/or (b) has engaged, are engaging, or are about to engage in transactions, practices, or courses of business which operate, operated, or would operate as a fraud or deceit upon the purchasers of securities.

209. By reason of the foregoing, Defendant Mann has violated, is violating, and unless restrained and enjoined will again violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(1) and 15 U.S.C. § 77q(a)(3).

EIGHTH CLAIM FOR RELIEF
(Against Nordlicht and Levy ,Landesman, Mann and SanFilippo)
Aiding and Abetting Violations of Section 17(a) of the Securities Act

210. The Commission realleges and incorporates paragraphs 1 through 209 by reference as if fully set forth herein.

211. By engaging in the conduct described above, and pursuant to Section 15(b) of the Securities Act, 15 U.S.C. § 77o(b), Defendants Nordlicht, Levy, Landesman, Mann and

SanFilippo, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Defendant Platinum Management's, and Defendants Nordlicht and Levy, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Platinum Credit's, primary violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], because they knowingly or recklessly provided substantial assistance to Defendants Platinum Management's, and Defendants Nordlicht and Levy knowingly and recklessly provided substantial assistance to Platinum Credit's, violations of the Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

212. Unless restrained and enjoined, Defendants Nordlicht, Levy, Landesman, Mann and SanFilippo will again aid and abet violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) .

NINTH CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman and SanFilippo)
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

213. The Commission realleges and incorporates paragraphs 1 through 212 by reference as if fully set forth herein.

214. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman and SanFilippo directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce or by the use of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: a) employed, are employing or are about to employ devices, schemes and artifices to defraud; b) have obtained, are obtaining or are about to obtain money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; and/or c) have engaged, are engaging or are about to engage in transactions, practices or courses of business which have operated, operate or will operate as a fraud and deceit upon investors.

215. By engaging in the foregoing conduct, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman, and SanFilippo have violated, are violating, and unless restrained and enjoined will again violate Section 10(b) of the Exchange Act, 15 U.S.C. §§78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

TENTH CLAIM FOR RELIEF
(Against Mann and Shulse)
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

216. The Commission realleges and incorporates paragraphs 1 through 215 by reference as if fully set forth herein.

217. By engaging in the conduct described above, Defendants Mann and Shulse, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce or by the use of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: a) employed, are employing or are about to employ devices, schemes and artifices to defraud; and/or b) have engaged, are engaging or are about to engage in transactions, practices or courses of business which have operated, operate or will operate as a fraud and deceit upon investors.

218. By engaging in the foregoing conduct, Defendants Mann and Shulse have violated, are violating, and unless restrained and enjoined will again violate Section 10(b) of the Exchange Act, 15 U.S.C. §§78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §240.10b-5(a) and 17 C.F.R. §240.10b-5(c).

ELEVENTH CLAIM OR RELIEF

(Against Small , Landesman, Mann, SanFilippo and Shulse)
Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rule 10(b)-5 Thereunder

219. The Commission realleges and incorporates paragraphs 1 through 218 by reference as if fully set forth herein.

220. By engaging in the conduct described above, and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants Small, Landesman, Mann, SanFilippo and Shulse, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Defendant Platinum Management's primary violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder 17 C.F.R. § 240.10b-5, because they each knowingly or recklessly provided substantial assistance to Defendant Platinum Management's violations of Section 10b of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

221. Unless restrained and enjoined, Defendants Small Landesman, Mann, SanFilippo and Shulse will again aid and abet violations of Section 10b of the Exchange Act and Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court grant the following relief:

I.

A Final Judgment finding that the Defendants violated the securities laws and rules promulgated thereunder as alleged herein.

II.

An Order temporarily, and preliminarily through a final judgment, restraining and enjoining Platinum Credit, its agents, servants, employees and attorneys and all persons in

active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from directly or indirectly committing, or aiding and abetting or controlling, future violations of Sections 206(1), 206(2), 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8, thereunder; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act 15 U.S.C. § 78j(b), Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

An order temporarily, and preliminarily through a final judgment, appointing a Receiver over the Receivership Entities.

IV.

An Order permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from directly or indirectly committing, or aiding and abetting or controlling, future violations of Sections 206(1), 206(2), 206(4) of the Advisers Act,15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-2 [17C.F.R. § 275.206(4)-2] and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8]; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder 17 C.F.R. § 240.10b-5.

V.

A Final Judgment ordering all Defendants, except Shulse, to disgorge, on a joint and several basis, all ill-gotten gains and unjust enrichment, plus prejudgment interest thereon.

VI.

A Final Judgment ordering Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

VII.

An Order temporarily, and preliminarily through a final judgment, appointing a receiver over the Receivership Entities.

VIII.

An Order temporarily, and preliminarily through a final judgment, freezing the assets of X and Y, including their bank and brokerage accounts pending a final judgment, pursuant to the Court's equitable power and Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5).

IX.

An Order granting expedited discovery.

X.

An Order temporarily, and preliminarily through a final judgment, restraining and enjoining Defendants and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

XI.

Granting such other and further relief as this Court deems just, equitable, or necessary in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY DEMAND

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: December 19, 2016
New York, New York

Respectfully submitted,

By:

Andrew M. Calamari
Sanjay Wadhwa
Adam Grace
Kevin P. McGrath
Neal Jacobson
Jess Velona
Danielle Sallah
Attorneys for the Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022
(212) 336-0180 (Velona)

EXHIBIT B

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ DEC 19 2016 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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.

Civil Case No.

16-cv- 6848 (KAM) (VMS)

~~[PROPOSED]~~ KAM ORDER APPOINTING RECEIVER

WHEREAS this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission ("SEC", "Commission" or "Plaintiff") to appoint a receiver in the above-captioned action;

WHEREAS the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of Platinum Credit Management, L.P.; Platinum Partners Credit Opportunities Master Fund LP; Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund LLC; Platinum Partners Credit Opportunity Fund (BL) LLC; Platinum Liquid Opportunity Management (NY) LLC; and Platinum Partners Liquid

Opportunity Fund (USA) L.P. ("Receivership Entities"); to (i) preserve the status quo, (ii) ascertain the extent of commingling of funds among the Receivership Entities; (iii) ascertain the true financial condition of the Receivership Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Receivership Entities; (v) prevent the encumbrance or disposal of property or assets of the Receivership Entities; (vi) preserve the books, records and documents of the Receivership Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix) conduct an orderly wind down including a responsible liquidation of assets and orderly and fair distribution of those assets to investors; and (x) determine whether one or more of the Receivership Entities should undertake bankruptcy filings.

WHEREAS the Court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the "Receivership Assets").

2. Until further Order of this Court, Bart Schwartz is hereby appointed to serve without bond as receiver (the "Receiver") for the receivership estate of the Receivership Entities (the "Receivership Estate").

I. General Powers and Duties of Receiver

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver

at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

4. All officers, directors, managing members, general and limited partners of the Receivership Entities are hereby dismissed from any and all positions of management of the Receivership Entities, and the powers of any officers, directors, managing members, general and limited partners of the Receivership Entities, are hereby subject to the authority and discretion of the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of the Receivership Entities' claims.

5. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities except as may be authorized or delegated by the Receiver.

6. Subject to the specific provisions in this Order, the Receiver shall have the following general powers and duties:

A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property");

B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;

C. To manage, control, operate and maintain the Receivership Entities and hold in the Receiver's possession, custody and control all Receivership Property, pending further Order of this Court;

D. To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the Receiver's duties as Receiver;

E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, managers, managing members, and general and limited partners, and agents of the Receivership Entities;

F. To engage and employ persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval;

G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure and Court orders;

I. To investigate transactions by and among Receivership Entities, defendants, and any other persons and entities.

J. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver's duties

as Receiver;

K. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate; and,

L. To take such other action as may be approved by this Court.

II. Access to Information

7. The Receivership Entities and the Receivership Entities' and the past and/or present officers, directors, managers, managing members, general and limited partners, agents, attorneys, accountants and employees of the Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

8. Within five (5) days of the entry of this Order, the Receivership Entities shall serve upon the Receiver and the Commission a sworn statement, listing: (a) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entities; and, (c) the names, addresses and amounts of investments of all known investors of the Receivership Entities.

9. Within five (5) days of the entry of this Order, Receivership Entities shall provide to the Receiver and the Commission copies of Receivership Entities' federal income tax returns with all relevant and necessary underlying documentation.

10. The Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, managers, managing members, general and limited partners, attorneys,

employees, and accountants, shall cooperate with the Receiver and produce all documents as may be required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities.

III. Access to Books, Records and Accounts

11. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

12. The Receivership Entities, as well as their past and/or present officers, directors, agents, managers, managing members, general and limited partners, attorneys, employees, and accountants, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, the Receiver's agents and/or employees.

13. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities

except upon instructions from the Receiver;

B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court; and

C. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

IV. **Access to Real and Personal Property**

14. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

15. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

16. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have

exclusive control of the keys and all other means of access to the real property. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys or other means of access made, nor shall they have keys or other means of access in their possession during the term of the receivership except as authorized by the Receiver.

17. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

V. Notice to Third Parties

18. The Receiver shall promptly give notice of the Receiver's appointment to all known persons and entities including past and present officers, directors, managers, managing members, general and limited partners, agents, attorneys, accountants, and employees of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

19. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entities shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entities had received such payment.

20. In furtherance of the Receiver's responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial

condition of the Receivership Estate. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

21. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individuals, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

22. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage, trash removal, and any other services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VI. Injunction Against Interference with Receiver

23. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of the Receiver's duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entities, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate.

and (v) all proceedings, bankruptcy processes in which the Receivership Entities are involved

24. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VII. Stay of Litigation

25. As set forth in detail below, the following proceedings, ***excluding*** (i) the instant proceeding, (ii) all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, and for the avoidance of doubt, (iii) Cause No: FSD 118/2016 (NAS) and Cause No: FSD 131 of 2016 (AJJ) pending before the Grand Court of the Cayman Islands, and (iv) the bankruptcy cases *In re Platinum Partners Value Arbitrage Fund L.P.*, 16-12925 (Bankr. S.D.N.Y.) and *In re Platinum Partners Value Arbitrage Fund International Ltd.*, 16-12934 (Bankr. S.D.N.Y.), are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities; or, (d) any of the Receivership Entities' past or present officers, directors, managers, managing members, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

26. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

27. All Ancillary Proceedings are stayed in their entirety, and all courts having any

jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

VIII. Managing Assets

28. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

29. Subject to the specific provisions of this order, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

30. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate.

31. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating

with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

32. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations.

IX. Investigate and Prosecute Claims

33. Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in the Receiver's discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

34. Subject to the Receiver's obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate, the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

35. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities.

X. Bankruptcy Filing

36. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for any or all of the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 3 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition. *See*, *In re Bayou Group, LLC*, 564 F.3d 541, 548-49 (2nd Cir. 2009).

37. The provisions of Section VII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

XI. Liability of Receiver

38. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, the Receiver's Retained Personnel (as that term is defined below), and the Receivership Estate.

39. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with the Receiver's fiduciary obligations in this matter.

40. The Receiver and the Receiver's agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or

Retained Personnel.

41. The Receiver and the Receiver's advisers and agents shall be indemnified by each of the Receivership Entities except for gross negligence, willful misconduct, fraud, or breach of fiduciary duty determined by a final order no longer subject to appeal, for all judgments, costs, reasonable expenses including legal fees (which shall be paid under the indemnity after court approval as they arise), arising from or related to any and all claims of whatsoever type brought against any of them in their capacities as Receiver or advisers or agents of the Receiver; provided, however, that nothing herein shall limit the immunity of the Receiver and the Receiver's advisers and agents allowed by law or deprive the Receiver or the Receiver's advisers and agents of indemnity for any act or omission for which they have immunity.

42. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

43. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XII. Recommendations and Reports

44. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation and distribution of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

45. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the

report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

46. The Quarterly Status Report shall contain the following:

A. A summary of the operations of the Receiver;

B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;

C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;

D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;

E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

F. A summary of the status of the Receiver's investigation of the transactions by and among the Receivership Entities;

G. A list of all known investors and creditors and the amount of their investments and claims, as applicable, redacted to exclude personally identifiable information;

H. The status of investor and creditor claims proceedings, after such proceedings

have been commenced; and,

I. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

47. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

XIII. Fees, Expenses and Accountings

48. Subject to the specific provisions of this Order, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

49. Subject to the specific provisions of this Order, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist the Receiver in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

50. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

51. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement

from the Receivership Estate (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

52. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

53. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court in the SEC staff's discretion or such other percentage holdback as the Court may order. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

54. Each Quarterly Fee Application shall:

A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and

B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

55. At the close of the Receivership, the Receiver shall submit a Final Accounting, in

a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

SO ORDERED.

Dated: Brooklyn, NY
December 19, 2016

s/KAM
United States District Judge

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC	§	CASE NO. 15-34287 (MI)
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	ADVERSARY NO. ___________
PLATINUM PARTNERS VALUE ARBITRAGE FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS LIQUID OPPORTUNITIES MASTER FUND LP, AND PPVA BLACK ELK (EQUITY) LLC,	§	
	§	
DEFENDANTS.	§	

EMERGENCY APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF, INCLUDING AN EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND REQUEST FOR HEARING

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EXPEDITED RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EXPEDITED BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY. THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REQUESTS THAT THE COURT GRANT THE EMERGENCY RELIEF REQUESTED HEREIN AS SOON AS IS PRACTICABLE.

TABLE OF CONTENTS

Page

I. NATURE OF APPLICATION 1

II. JURISDICTION AND VENUE 2

III. OVERVIEW OF WHY THE TRUSTEE IS ENTITLED TO AN ORDER FREEZING CERTAIN PLATINUM ASSETS 2

IV. FACTUAL BACKGROUND 10

V. APPLICATION FOR INJUNCTIVE RELIEF 32

A. Legal Standard 32

1. Bankruptcy courts' injunctive powers under section 105 and Federal Rule of Bankruptcy Procedure 7065 32

2. Injunctive Relief under 11 U.S.C. Section 105 32

3. Injunctive Relief under Federal Rule of Bankruptcy Procedure Rule 7065 33

B. Application of the Four Injunctive Relief Factors to This Case 34

1. A substantial likelihood exists that the Trustee will prevail on the merits 34

a. Count I—Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(A) 35

b. Count II—Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(B) 37

c. Count III—Violations of the Texas Uniform Fraudulent Transfer Act 39

d. Count IV—Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550 40

2. The dissipation of assets and multiplicity of actions that would result if a TRO and preliminary injunction are not granted constitute a threat of irreparable injury 41

a. Platinum's fraudulent business practices put it on a slow but certain downward spiral from a $1.3 billion fund with flawless annual returns to an embattled fund seeking liquidation 44

b. Explosive revelations that Platinum and its CIO are under criminal investigation follow arrest of Platinum co-founder 45

c. Platinum's troubles mount until it is forced to announce a shutdown of PPVAF and PPCOMF, its largest funds 46

d. Platinum continues to try to evade its U.S. creditors and investors by filing a Chapter 15 bankruptcy proceeding 46

e. Platinum is suffering severe liquidity problems and threats of substantial asset devaluation, requiring emergency triage 47

f. Platinum's various legal and financial scandals has investors scrambling to shed Platinum assets and plaintiffs rushing to file lawsuits, further exacerbating Platinum's woes 49

g. The Trustee is virtually certain to suffer an imminent and irreparable injury if the fraudulently conveyed Renaissance sale proceeds are not frozen before they can be dissipated 50

3. The Injunction will not cause harm to the Defendants 51

4. The Injunction will not disserve public interest 52

VI. RELIEF SOUGHT 52

VII. REQUEST FOR A HEARING 53

VIII. CONCLUSION 53

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

1. Richard Schmidt ("***Trustee***"), the Trustee of the Black Elk Litigation Trust ("***Trust***") files this Emergency Application for Injunctive Relief, Including an Emergency Motion for a Temporary Restraining Order ("***Application***") seeking immediate injunctive relief in the form of a temporary restraining order followed by a preliminary injunction regarding assets held by Platinum Partners Value Arbitrage Fund LP ("***PPVAF***"), Platinum Partners Credit Opportunities Master Fund LP ("***PPCOMF***"), Platinum Partners Liquid Opportunities Master Fund LP ("***PPLOMF***"), and PPVA Black Elk (Equity) LLC ("***PPVA BE***") (collectively "***Platinum***" or "***Defendants***").

I. NATURE OF APPLICATION

2. The Trustee has filed an Adversary Complaint seeking, among other relief, to avoid fraudulent transfers. The Trustee requests emergency injunctive relief in aid of its claims in the Complaint. Specifically, the Trustee now seeks a temporary restraining order, and subsequently intends to seek a temporary injunction to freeze $97,959,854.79 which the Defendants fraudulently transferred to themselves and for their benefit following the August 2014 sale of the primary oil and gas assets of Black Elk Energy Offshore Operations, LLC ("***Black Elk***" or "***the Debtor***") to Renaissance Offshore, LLC ("***Renaissance***") and ("***Renaissance Sale***"). The amounts that each Defendant received from the Renaissance Sale are the same amounts that the Trustee asks to be frozen in each Defendant's bank account(s): PPVAF ($15,332,672.97); PPCOMF ($24,600,584.31); PPLOMF ($5,000,000.00); and PPVA BE ($32,563,819.73). In addition, Platinum caused Black Elk to transfer $20,462,777.78 to New Mountain Finance Corp. to satisfy a put option that obliged Platinum to repurchase from New Mountain certain Black Elk equity. The Trustee alleges that Defendants' transfer of these amounts constitute fraudulent conveyances under 11 U.S.C. § 548(a)(1)(A), 11 U.S.C.

§ 548(a)(1)(B), Tex. Bus. & Com. Code Ann. § 24.005, and 11 U.S.C. § 550. Exhibits and a declaration from Craig Smyser, attorney for the Trustee, providing evidence supporting the relevant factual allegations of the Complaint and this Application, including authentication of the documentary evidence cited herein, are attached and incorporated by reference.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (C), (H) and (O). Venue is proper in this Court pursuant to 28 U. S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections 105, 502, 510, 544, 548 and 550 of the Bankruptcy Code. In accordance with Local Rule 7008-1, the Trustee consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

III. OVERVIEW OF WHY THE TRUSTEE IS ENTITLED TO AN ORDER FREEZING CERTAIN PLATINUM ASSETS

4. The Trustee brings this adversary proceeding to avoid and recover certain fraudulent transfers made by Black Elk, under the direction and control of Platinum, within two years before the date of the filing of Black Elk's involuntary bankruptcy petition. Platinum's scheme to sell off Black Elk's assets, transfer the proceeds from the sales to Platinum, and bankrupt Black Elk while continuing Black Elk's business in another company to which Platinum fraudulently transferred other Black Elk assets, hastened and caused Black Elk's bankruptcy and stripped Black Elk of any assets to pay its trade and secured creditors.

5. The main scheme Platinum used to enrich itself, to dismember Black Elk, and to stiff Black Elk's trade creditors was to fraudulently transfer to itself and for its benefit nearly

$100,000,000 of the proceeds from the sale of Black Elk's best oil and gas assets to Renaissance Offshore, LLC. This application for temporary orders is aimed at preventing Platinum from dissipating that money.

6. This overview and the subsequent detailed description of the Renaissance transaction will show that the Trustee will succeed on the merits. If the fraudulently transferred assets (or an amount equal to that amount of money) are not frozen, the Trust will be irreparably harmed because Platinum will either cease to exist, Platinum's assets will be taken by other creditors or investors, or Platinum will succeed in dissipating the assets itself. One of these eventualities is almost certain given that Platinum's flagship fund is in liquidation proceedings in the Cayman Islands; that same fund has filed a Chapter 15 bankruptcy proceeding in the United States; one of its principal managers has been indicted; the Department of Justice is investigating whether Platinum overvalued its oil and gas assets; securities class action firms are soliciting investor-plaintiffs; one judge recently questioned whether Platinum even had enough money to pay back a $30 million debt; and the financial press (including the Wall Street Journal, Reuters, and Bloomberg) is awash in stories questioning Platinum's continued viability. When one of those eventualities occurs, the creditors of Black Elk—unsecured and secured—will be irreparably harmed, left with virtually no remedy to recover the fraudulently transferred funds. The trade creditors who kept Black Elk afloat, in some cases literally, will have waited years for relief, in vain. Only by ordering the requested freeze will these creditors and the Litigation Trust established by this Court be protected.

7. On June 26, 2014, a year and two months before creditors forced Black Elk into involuntary Chapter 7 bankruptcy, John Hoffman, then CEO of Black Elk, wrote an email to the Company's lawyers that described Platinum's scheme and predicted the results:

> I apologize for this note out of the blue but I need your guidance. Platinum (PPVA) is planning to create many new companies and place the acquisitions [including Northstar] that Black Elk recently technically worked up, bid and won into those new entities. Many if not all of existing equity holders would be left in the cold with no equity in the new companies. Further, they plan to isolate Black Elk, pay themselves back ([Series E] preferred equity) ahead of so called friendly bond holders [the Beechwood entities] and lay off most people. I believe that the ultimate plan is to bankrupt the company.

8. Hoffman was prescient: Platinum took every one of those predicted steps in just the order Hoffman foretold. Of course, none of the trade creditors who sent workers and equipment to keep Black Elk's rigs working based on promises from Platinum-controlled employees that the workers would be paid knew what Platinum had planned for Black Elk and that Platinum used the revenue stream they were producing to prop up a "dead man walking" while Platinum carried out its various schemes to dismember the company and enrich itself and its cronies.

9. **The Renaissance fraudulent transfer.** The hedge fund Platinum Partners, which through various Platinum and Platinum-related entities controlled Black Elk and was by far its largest investor, faced the prospect of losing more than $100 million in the demise of Black Elk. To ameliorate that loss, Platinum devised several schemes to divert money to itself ahead of Black Elk's inevitable bankruptcy, a proceeding where Platinum's recovery would be compromised by other claims on Black Elk's diminished assets.

10. Platinum's first scheme to maximize the dollars it sucked out of Black Elk pre-bankruptcy involved selling off Black Elk's prime assets and diverting the proceeds from that sale to Platinum instead of to secured creditors, including Platinum, who were entitled to first call on the proceeds from the asset sale. Why would Platinum, a secured creditor, not be satisfied with obtaining payment of the same proceeds, only as a secured creditor?

11. Here's why: if Platinum could divert the money to itself before the bankruptcy, it would enrich itself to the same extent as it would as a senior secured creditor while at the same time maintaining its secured creditor position at the head of the line to receive any assets from Black Elk's estate in the bankruptcy. Thus, at the end of 2013 and into 2014, as Black Elk negotiated the sale of its prime assets to Renaissance Offshore, LLC, Platinum implemented a strategy to force the Holders of the 13.75% Senior Secured Notes to permit Platinum to transfer the proceeds of that sale to benefit Platinum and Platinum-related entities. Platinum would effect the transfer by forcing Black Elk, its controlled entity, to use the bulk of the proceeds from the Renaissance sale to repurchase from Platinum and Platinum-related entities unsecured Black Elk equity—Series E Units—junior to the Senior Secured Notes. As an added bonus, it would use $20 million of the proceeds to force Black Elk to buy back Series E Units from New Mountain Finance Corp., thus relieving Platinum of a put obligation to buy back those same units itself.

12. **The lynchpin.** The lynchpin in Platinum's fraudulent transfer strategy was to secure a majority vote of Senior Secured Note Holders to amend the Indenture to permit Black Elk to decline to pay to the Note Holders the $98 million in proceeds from the Renaissance sale and instead permit Black Elk to pay that money to Platinum to redeem Series E Units. Recognizing that it would be difficult to persuade Secured Note Holders to renounce their right to these proceeds—especially since the company that secured the Notes was financially insolvent—Platinum had to find a way to rig the vote.

13. Black Elk indeed prefigured that Platinum might try to trick the Note Holders. In its 2013 10-K, under a large, bolded headline titled "Risks Related to Our Relationship with Platinum," Black Elk warned that since Platinum owned approximately 85% of its outstanding voting interests and 66% of its total outstanding membership interests, Platinum controlled the

company and "as a controlling member, Platinum could make decisions that may conflict with noteholders interests." In its manipulation of the Indenture vote enabling it to fraudulently transfer the $98 million in net proceeds from the Renaissance transaction, Platinum made good on that risk to Note Holders.

14. **The rigged vote.** The Indenture voting math is not complicated. In 2010, Black Elk issued $150 million face value of the 13.75% Senior Secured Notes. To permit transfer of the Renaissance sale proceeds to Platinum rather than to the Senior Secured Note Holders, Platinum had to secure approval of an amendment to the Indenture. To secure the amendment to the Indenture, a majority of the disinterested Note Holders had to approve Platinum's proposal by either tendering their Notes or consenting to the proposal.

15. Specifically, the Offer to Purchase and Consent Solicitation Statement provides: "Pursuant to Section 316(a) of the Trust Indenture Act of 1939, Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the majority." Since Platinum controlled Black Elk, this statement meant that the sum of all Notes held by Platinum, Platinum-related entities, and entities controlled by Platinum were to be subtracted from the $150,000,000 Notes entitled to vote. Of the number remaining after that subtraction, a majority had to tender or consent.

16. Since it was obvious to a rational economic actor that few Senior Secured Note Holders would consent to the provision depriving them of nearly $100,000,000 dollars, Platinum had to find a way to ensure that a majority of the disinterested voters would consent to a proposal so contrary to their financial interest. The most obvious way to secure that consent was to use a Trojan Horse consenter: secure the votes of a company holding a substantial number of Notes

that looked like an independent company but was in fact controlled by Platinum. That simple device was what Platinum chose.

17. **The Trojan Horse.** The Trojan Horse company was Beechwood Bermuda International Limited LLC and its related entities. Platinum controlled Beechwood through significant ownership interests, by seconding a number of Platinum employees to Beechwood, and by installing a Platinum employee, David Levy, as the Chief Investment Officer of B Asset Manager, the investment arm of the Beechwood entities. Levy remained an agent of Platinum while at Beechwood, as evidenced by the fact that he continued to use his Platinum email address while monitoring Black Elk and Platinum affairs in 2014, visiting Black Elk offices in Houston regularly, and involving himself constantly in the process that led to the fraudulent transfer of the Renaissance proceeds to Platinum. After Levy was on board at Beechwood, Levy directed a number of Beechwood's dollars to investments in Platinum entities. Then, in early 2014, Levy orchestrated Beechwood's acquisition of some $37,000,000 of the Senior Secured Notes.

18. Given this lineup, it was not surprising that Levy caused Beechwood and related entities to vote to consent more than $37,000,000 worth of Notes in favor of the Platinum proposal. Shortly after engineering Beechwood's purchase of the Senior Secured Notes and voting those Notes in favor of the Platinum scheme, Levy left his CIO position at Beechwood and returned fulltime to Platinum and to his shepherding of Black Elk toward bankruptcy.

19. **Tabulating the vote.** Under Platinum's own vote calculation, Beechwood's consents tipped the balance for Platinum. In an August 14, 2014 email from Daniel Small at Platinum – the same Daniel Small whom Platinum installed on Black Elk's Board in 2009, where he remained at the time of the vote, and who also shilled for Beechwood to induce insurers to

invest with it — reported that there were $88,386,000 in Notes not affiliated with Platinum and thus eligible to vote. Of those eligible to vote, Small reported $37,618,000 consented (most if not all consisting of the Beechwood vote) and $11,433,000 tendered. Adding the Beechwood consents to the tenders yields a total of $49,051,000 in consents and tenders, or 55%—a bare majority of Note Holders purportedly eligible to vote.

20. Elementary math informs that without the $30 to $37 million Beechwood votes, the proposal to amend the Indenture and permit transfer of the sale proceeds to Platinum would not have succeeded because it did not have the required majority of disinterested voters; Note Holders that did not vote would be tallied as not approving the proposal. In fact, absent $37 million in consents, only some 7.7% of Holders approved the proposed Indenture amendment Platinum put forth in the Offer to Purchase and Consent Statement.

21. **False statement to the SEC.** The extent of Platinum's fraud can be found in the text of the last 10-Q Black Elk filed on September 30, 2014, in which it described the Renaissance transaction and the manipulation of the 13.75% Senior Secured Notes:

> "On July 16, 2014, [Black Elk] announced that it has commenced a cash tender offer to purchase its outstanding $150,000,000 aggregate principal amount of 13.75% senior secured notes due 2015. The Offer and the Consent Solicitation were being made in connection with our proposed disposition of certain assets pursuant to a Purchase and Sale Agreement between the Company and Renaissance Offshore, LLC, dated July 14, 2014. . . . As of the expiration of the offer, $11,333,000 principal amount of the Notes validly tendered and not withdrawn, and holders of $110,565,000 principal amount of the Notes, or 73.71% of the Notes, ***validly consented*** to the Consent Solicitation and not revoked such consent." (emphasis added).

22. Of course, the only way Platinum reached the absurd "valid consent" figure of $110,565,000—since Platinum and its related and controlled entities, even omitting the Beechwood-controlled Notes, owned at least $61,000,000 Notes—is to count ***all the Notes held by Platinum and Platinum-related entities*** as validly consenting when, by the terms of the

597944.2

Consent Solicitation itself, only disinterested Note Holders, not affiliated with or controlled by Platinum, could be counted. (For ease of reference, here again is the quote from the Consent Solicitation Statement: "Pursuant to Section 316(a) of the Trust Indenture Act of 1939, Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the majority."). Thus, the statement in an SEC filed 10-Q in September 2014 that 73.71% of the Notes validly consented is on its face false and fraudulent.

23. Not surprisingly, Beechwood and Levy have now been sued by Bankers Conseco Life Insurance Company (the "BCLIC" referenced in the signatures to the Modification Agreement) and Washington National Life Insurance Company (the "WNIC" referenced in the signatures to the Modification Agreement) in New York for fraudulently obtaining investments from the insurance companies and investing that money "to benefit Platinum, thereby enriching Platinum's and Beechwood's owners."

24. On July 21, 2015, Black Elk's auditors, BDO, informed Black Elk, Platinum, and Levy that it needed a "full breakdown of where every dollar went from the renaissance transaction including a breakdown of the payouts to platinum and its related entities." Moreover, BDO stated "it wanted to state in the notes that they believe this transaction violated the indenture and was a preferential payment."

25. The manipulation of the Indenture vote and the subsequent fraudulent transfer of $98,000,000 – virtually the entire remaining cash balance from the Black Elk Renaissance transaction – to Platinum and for Platinum's benefit all occurred less than two years before Black Elk filed for bankruptcy. Thus, the transactions sending the $98 million to Platinum should be avoided as fraudulent and amounts equivalent to the proceeds of those transactions should be

frozen in the custody of the entities that fraudulently obtained the assets before Platinum dissipates the assets and once again leaves the trade and other creditors of Black Elk without recompense for their work and their debt.

IV. FACTUAL BACKGROUND[1]

26. **Black Elk.** Formed in November 2007 as a limited liability company, Black Elk was an oil and gas company headquartered in Houston with substantially all its producing assets located offshore in U.S. federal and Louisiana and Texas state waters in the Gulf of Mexico. (Ex. 3, at 1). Black Elk acquired, exploited, and developed properties that other oil and gas companies had desired to remove from their producing property portfolios. (*Id.*). John Hoffman ("Hoffman") was a Black Elk founder and the company's Chief Executive Officer and, during the events leading up to the Renaissance sale, Anna Marizza Piche ("Piche") was the company's General Counsel. Both were at Black Elk until August 2014.

27. From 2008 to 2011, Black Elk employed an acquisition strategy to expand its holdings and further develop its business. (*Id.* at 1–2.)

28. To finance its operations, on November 23, 2010, Black Elk issued $150 million of debt to the Senior Secured Note Holders, and simultaneously entered into, among other documents, a Security Agreement (the "Security Agreement") in favor of The Bank of New York Mellon Trust Company, N.A. ("BNY") as Trustee and Collateral Agent for the 13.75% Senior Secured Notes. (*Id.* at 2, 55–56; Ex. 90, at 1; Ex. 92, at 1; Ex. 91, at 1; Ex. 16, at 1). Pursuant to the Security Agreement, the Senior Secured Note Holders were granted a first priority lien on substantially all of Black Elk's assets. (Ex. 92, at Articles IV and V, 10–18).

[1] For ease of reference, the background provided in this Application at Section IV substantially mirrors the factual and procedural background provided in Sections IV and V of the Original Complaint.

29. By December 31, 2013, Black Elk had approximately 457,065 gross (223,852 net) acres under lease in the Gulf of Mexico, 935 gross (444 net) wells and 58 production platforms. (Ex. 3, at 1).

30. For 2014, Black Elk stated it intended to increase its reserves production and cash flow through several strategies. (*Id.* at 2). One strategy was to "continue to pursue strategic acquisitions." (*Id.*). Black Elk would seek to acquire "under-capitalized" assets in the Gulf of Mexico where it could "extend[] the economic life of fields." (*Id.*). The importance of this acquisition strategy could not be underestimated, as Black Elk told the SEC, because: "If we are unable to replace reserves through drilling or acquisitions, our level of production and cash flows will be adversely affected." (*Id.* at 22).

31. Production and drilling on platforms in the Gulf of Mexico depended on the service of many independent contractors willing to work under those conditions. In its 2013 10-K report, Black Elk acknowledge its dependence on its contractors: **"We are dependent on contractors and sub-contractors for our daily operational and service needs on individual fields and platforms. If these parties fail to satisfy their obligations to us or if we are unable to maintain these relationships, our revenue, profitability and growth prospects could be adversely affected."** (*Id.* at 25). Yet, despite this reliance on contractors, Black Elk acknowledged that, "to increase liquidity, we stretched accounts payable." (*Id.* at 26). That meant Black Elk was not paying the contractors in a timely fashion for the work—"the daily operational and service needs"—that was the lifeblood of its operations. Thus, "stretch[ing] accounts payable" threatened its core business, a fact Black Elk acknowledged when it told the SEC that "our inability to pay trade creditors in a timely manner could impair our ability to develop and operate our properties." (*Id.*).

32. By early 2014, as its capital expenditure budget dropped by 70% from the previous year, Black Elk was effectively insolvent—it was regularly pushing creditors' payments off to more than a year past their due dates because it simply did not have sufficient cash to pay its current liabilities. (*Id.* at 6, 26; Ex. 14; Ex. 100).

33. **Platinum.** Platinum Partners, LP is "a Manhattan hedge fund," that was founded in part by Murray Huberfeld, who is currently under criminal indictment. (Ex. 72, at ¶ 8d; Ex. 73). Platinum Management (NY) LLC ("Platinum Mgmt") and Platinum Liquid Opportunity Management (NY) LLC are hedge fund sponsors. They provide services to pooled investment vehicles. According to the Platinum Partners website, they launch and manage hedge funds for their clients, including the funds at issue in this case. (Ex. 72, at ¶ 11). They have listed Murray Huberfeld ("Huberfeld") as Partner, Mark Nordlicht ("Nordlicht") as a Managing Member and/or Chief Investment Officer, Uri Landesman ("Landesman") as President, and Daniel Small ("Small") as Managing Director. (Ex. 27; Ex. 68, at 12, 13, 16; Ex. 69, at n.3, 3–4).

34. Platinum Mgmt is the manager for PPVAF, the core Platinum hedge fund. PPVAF was founded in 2003 by Nordlicht, with investors that included Huberfeld, who has also been credited with being a founder and part owner of Platinum. (Ex. 104, at 2). Nordlicht has been the Chief Investment Officer and the person primarily directing Platinum's day-to-day operations, as demonstrated by his signing, in various capacities, a joint filing agreement with the SEC on behalf of Platinum Mgmt, PPVAF, PPLOMF, and other Platinum-affiliated entities. (Ex. 68, at 16–17).

35. A number of other Platinum executives have played key roles in the companies, like Black Elk, in which Platinum has invested, and then dominated and controlled. In addition to Nordlicht, Platinum's primary actors relevant to this case are: (a) David Levy ("Levy"),

Huberfeld's nephew, a Managing Director and Portfolio Manager at Platinum, whom Platinum placed as Chief Investment Officer of the "friendly" Beechwood entities, and as the President of B Asset Manager, which was both the Administrative Agent for Black Elk's credit facility and also the investment arm of the Beechwood entities; (b) Daniel Small ("Small"), a Managing Director at Platinum Mgmt and Portfolio Manager at Platinum, and also placed by Platinum in 2009 on the Black Elk Board of Managers; (c) Samuel Salfati ("Salfati"), who was an executive of Platinum that was placed on the Black Elk Board of Managers in 2014 to secure a majority vote regarding the Renaissance Sale and the distribution of the proceeds to improperly repurchase Series E preferred equity. Platinum also worked through Black Elk's Chief Financial Officer, Jeff Shulse ("Shulse"), whom Platinum placed at Black Elk in January 2014, and also through Steven Fuerst ("Fuerst"), whom Platinum placed at Black Elk as its General Counsel in August 2014.

36. In the first quarter of 2013, Black Elk entered into contribution agreements with PPVA BE and Platinum Partners Black Elk Opportunities Fund LLC ("PPBE") or entities designated by PPBE (together, the "Platinum Group"), pursuant to which Black Elk issued 50 million additional Series E preferred equity units and 3.8 million additional Class B Units to the Platinum Group for an aggregate offering price of $50 million. (Ex. 3, at 43). Black Elk also agreed to issue an additional 43 million Series E preferred equity units in exchange for $30 million of outstanding Series D preferred equity units and $13 million of paid-in-kind dividends. (*Id.*).

37. On February 12, 2013, Black Elk entered into a Pledge Agreement with Platinum under which Black Elk agreed to issue Class B Units to Platinum in exchange for financial consulting services. (*Id.* at 56). Consequently, Black Elk issued 1,131,458.5 Class B Units to

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PPVA BE pursuant to such agreement. (*Id.*; Ex. 93, at 3–4; Ex. 94, at Item 3.02–Unregistered Sales of Equity Securities; Ex. 95, at Item 3.02–Unregistered Sales of Equity Securities).

38. Also in the first quarter of 2013, Black Elk created and issued its first tranche of Series E Preferred Units which ultimately became one of the main vehicles Platinum used to transfer proceeds from the Renaissance sale in derogation of the rights of the Senior Secured Note Holders and trade creditors. (Ex. 96, at 1, 3–4). Then, in the Sixth Amendment to the Operating Agreement, Black Elk provided that the Class E Preferred Return was 20% per annum, provided that if the Series E was not paid off by March 24, 2014, the Class E Preferred Return rose to 36% per annum. (Ex. 97, at 1). Platinum caused the Sixth Amendment to occur as part of its inducement to New Mountain Finance Holdings, LLC ("New Mountain") to purchase $20,000,000 in Series E Units, which New Mountain did. (Ex. 20, at 1–2). The kicker was that Platinum, as guarantor, would be required to repurchase the $20,000,000 in Series E Units, with interest, if Black Elk did not repurchase them by the March 24, 2014 due date. (*Id.* at 2: "[I]n order to induce [New Mountain] to enter into this Agreement and to consummate the Transactions, each of [PPVA BE] and [PPVAF] . . . have provided [New Mountain] with an option to require [Black Elk] and Platinum, jointly and severally, to repurchase (the "Put Option") from [New Mountain] all and not less than all of the Class E Preferred Units . . . for an aggregate purchase price [of $20,000,000]. . . plus (Y) any accrued, uncapitalized, and unpaid Class E Preferred Return . . . plus (Z) the Interest on the Unpaid Amount . . . .")). This Put obligation was a part of Platinum's motivation to secure an amendment to the Indenture to permit Black Elk to use the Renaissance sale proceeds to buy back from New Mountain its Series E Units.

39. As of December 31, 2013, Platinum owned approximately 85% of Black Elk's outstanding voting membership interests and approximately 66% of Black Elk's total outstanding membership interests, giving it effective control of company transactions and other matters. (Ex. 3, at 33). As a result of its majority ownership interest in Black Elk and control of its voting equity, Platinum had the ability and did exercise its rights to remove and appoint key personnel, including all managers, and to determine and control the company, management policies, financing arrangements, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters submitted to members for approval, including potential mergers or acquisitions, asset sales and other significant corporate transactions. (*Id.*). Corporate documents, including Black Elk's Operating Agreement which refers to the role of a "Platinum Manager," and e-mail communications reveal overwhelming evidence of Black Elk management conferring with, and seeking approval from, Platinum for day-to-day business decisions, as well as any significant or extraordinary transactions. (Ex. 98, at Article 1 [defining "Annual Budget" to require Platinum's approval], Article 5.4(b) [listing actions Black Elk could not take without Platinum approval], Article 6.1 [giving Platinum power to make Black Elk board appointments]).

40. Prior to the petition date, Platinum, through its control of Black Elk's voting stock, had the ability to appoint all of the members of Black Elk's Board of Managers, who in turn, had the power to appoint and remove Black Elk's Officers. (Ex. 3, at 33). Through this influence, Platinum dominated Black Elk, exerting control over Black Elk's day-to-day operations. In fact, Black Elk's former Chief Executive Officer and several employees have stated that Platinum actively participated in and directed the affairs and operations of Black Elk. (Ex. 4, at 17:17–24; Ex. 53). Platinum's control over Black Elk includes, among other indicia of

domination, Platinum having directed Black Elk to engage in specific business transactions, causing Black Elk to terminate existing business relationships in favor of entities related to or affiliated with Platinum, and controlling which of Black Elk's vendors were paid (if at all) and when. Platinum used this domination of Black Elk inequitably and to the detriment of Black Elk and Black Elk's creditors by, among other actions, preventing Black Elk from paying is legitimate debts while diverting assets to the benefit of Platinum and its affiliates and insiders.

41. Platinum consolidated and further exerted its control of Black Elk, and stepped up the implementation of its schemes to plunder Black Elk, when it appointed Jeff Shulse as Black Elk's CFO in January 2014 and then as CEO in September 2014. (Ex. 3, at 98; Ex. 99, at Item 5.02(c)–Appointment of Chief Executive Officer). As described by Black Elk's founder and former CEO Hoffman, "Mr. Nordlicht and Mr. Small came in my office and made a very hard sell to put Jeff Shulse into the CFO position."[2] (Ex. 4, at 21:19–21). Hoffman further testified, "Jeff [Shulse] was not a team player and he was clearly there working for Platinum." (*Id.* at 110:19–21). Beginning in January 2014, Hoffman stated, "it was almost weekly we would either see Small, Levy or Nordlicht . . . [i]n the [Black Elk] office." (*Id.* at 74:9–12). Hoffman has further testified that "Platinum was calling all of the financial shots. I would say as of February [2014], they were in complete control of, you know, essentially almost every daily activity and most certainly stayed on top of every penny in and every penny out." (*Id.* at 17:17–24). Also according to Hoffman, Platinum had the ultimate decision-making authority on whether Black Elk would enter into an acquisition or buy properties. (*Id.* at 48:18–22).

[2] A new CFO was needed at Black Elk because, as Black Elk's CEO told Nordlicht, Small and Levy in a January 7, 2014 email responding to a Nordlicht email about strategies and a message "to hold off [Black Elk's] bondholders": "FYI – Bruce [Koch, Black Elk's prior CFO] has stopped coming in. He doesn't want to be CFO with all the stuff going on." (Ex. 67).

42. Shulse worked for the benefit of Platinum, and not Black Elk. On March 7, 2014, a couple of months after Platinum installed Shulse as Black Elk's CFO, Shulse sent an email to David Levy regarding " ." (Ex. 5). In this email, Shulse stated that Levy, on behalf of Platinum, was " ." (*Id.* at 3). Shulse went on to say that " " (*Id.*) By July 22, 2014, when Shulse still had not finalized his equity deal with Platinum, he sent Daniel Small an email pledging that " " (*Id.* at 1). Shulse went on to remind Small that " " (*Id.* (emphasis added)).

43. This July 2014 email also attached an earlier email from Shulse to Levy, where Shulse reaffirmed that " " (*Id.* at 2). Shulse restarted the discussion of his equity interest by first stating that " " (*Id.* (emphasis added)). After concluding his lengthy list of proposed terms, Shulse reminded

Platinum that "

" (*Id.* at 2–3). Shulse concluded this email with the following: "

" (*Id.*).

44. As Shulse and the other Platinum plants well knew, by July 2014, Black Elk "did not have enough income to pay all of the bills that were outstanding," (Ex. 4 at 91:5–6) and thus was unable to pay its debts as they became due. (Ex. 6, at Note 2–Going Concern Consideration). Black Elk did not have the funds or liquidity to pay its mounting trade debt, which is believed to have been in the $80 to $90 million range. (*Id.*; Ex. 4 at 81:23–82:8, 91:7-11). Black Elk was financially stressed to the point where the only viable alternative to filing a bankruptcy was to sell substantially all of its assets.

45. **The Renaissance Sale.** On or about July 10, 2014, Black Elk entered into a Purchase Sale Agreement with Renaissance Offshore, LLC (the "PSA") that would transfer certain assets to Renaissance in exchange for $170 million, subject to certain closing adjustments (the "Renaissance Sale").[3] (Ex. 7, Section 2.1). The Renaissance Sale represented a significant percentage of Black Elk's cash flow, proved reserves, and production. (Ex. 6, Note 5-Acquisitions and Divestitures). The Renaissance Sale closed on August 15, 2014, at which time $126,013,873.49 was transferred to Black Elk. (Ex. 8).

[3] Although Black Elk was the party on the PSA, Platinum was representing in an E&P portfolio PowerPoint that "." (Ex. 70, at 5).

46. Rather than use these Renaissance Sale proceeds to pay Black Elk's substantial debts, the Senior Secured Notes, or trade payables, Platinum used the proceeds to retire Black Elk's Series E preferred equity units, which not only provided no real value to Black Elk, but also cemented Black Elk's insolvency and avoided the proper order of priority. (Ex. 6, Note 9-Members' Deficit).

47. Because of its ownership and control of Black Elk and its ownership and/or control of a majority of the Senior Secured Notes, Platinum, through an improper Offer to Purchase and Consent Solicitation, purported to amend the Indenture to allow the vast majority of the Renaissance proceeds to be used to retire the Series E preferred equity and to purchase a small portions of the Senior Secured Notes. (Ex. 6, Note 8–Debt and Notes Payable; *id.*, Note 9-Members' Deficit).

48. **The Offer to Purchase and Consent Solicitation Scheme.** The Offer to Purchase and Consent Solicitation required a majority of the non-Platinum-affiliated Secured Senior Note Holders to consent. Platinum, through primarily Nordlicht, Small, and Levy, caused the following representation to appear in the Offer to Purchase and Consent Solicitation Statement:

> As of the date hereof [July 16, 2014], there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests,[4] own approximately $18,321,000 principal amount of outstanding Notes. Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, held any Notes.

[4] Platinum was the majority holder of Black Elk's Series E preferred equity. Schedules obtained from Black Elk's auditors indicate Platinum held 84,653,761 Series E preferred equity compared to 20,544,444 held by other parties. (Ex. 9; *see also* Ex. 10, at 3).

(Ex. 1, at 5). The last sentence was false, and designed to cover up Platinum's scheme to rig the consent vote.

49. Platinum's actual purpose was (1) to avoid having a large number of Notes tendered, (2) to have a majority of non-tendered Notes consent to the proposed amendment to the Indenture, and (3) to allow Platinum to receive approximately $98 million from retiring Series E preferred equity in disregard of the proper priority order of distribution. By avoiding tender of any significant amount of Senior Secured Notes, Platinum maximized the amount of cash available for retiring the Series E preferred equity, while also maintaining the priority position of Platinum's own Senior Secured Notes.

50. The purpose of discouraging a large number of tenders was achieved primarily by the unpalatable terms of the Offer to Purchase and Consent Solicitation, which provided no redemption premium on tendered Notes. (Ex. 1, at 8). Platinum accomplished the first part of its goal, as only $11,433,000 of the $150,000,000 Notes, or 7.62%, were tendered. (Ex. 28). Platinum tendered none of its own Notes.

51. Platinum achieved the second part of its goal—obtaining consent that would allow for an improper priority redemption of its Series E preferred equity—through a scheme to fix the vote. In the months leading up to the tender offer and consent solicitation, Platinum orchestrated the scheme explained by Nordlicht in a February 4, 2014 email to Black Elk's CEO Hoffman and CFO Shulse, and Platinum's Small, Levy, and David Ottensoser: "[T]he move is going to be to inform bondholders we have sales lined up but we are going to use the proceeds for working capital and for drilling. That will lead to friendlies getting control of bonds at decent prices. Once friendlies have control of bonds, we can then execute with flexibility according to what we would like to do." (Ex. 71).

52. Nordlicht further updated Black Elk's CEO Hoffman and General Counsel Piche in a February 6, 2014 email: "FYI – am close to buying 20 million bonds from msd. It will at that point be easy task to buy additional 25 [million] if bondholders don't behave and we can change covenants at any time by flipping our bonds to friendlies who will [d]o right by the company." (Ex. 11).

53. By March 3, 2014, Platinum's Nordlicht informed Levy, Shulse, Hoffman, and Piche that "We have friendly buying 20 million" and further assured this same group by email that Platinum would soon have "50 percent in friendly hands,"[5] in which case the vote would be "academic." (Ex. 12, at 1). Platinum informed Hoffman on "a number of occasions[,] . . . don't worry about the bond vote, you know. We [Platinum] have control of the vote." (Ex. 4, at 94:17–19). Hoffman specifically identified Platinum, Shulse and Fuerst as the people "aligned about the [Renaissance] money going to buy the Series E." (*Id.* at 100:13–15). This scheme, of course, was not revealed to the Senior Secured Note Holders that were unaffiliated with Platinum.[6]

54. Platinum, at the primary direction of Nordlicht, Levy, and Small,[7] obtained alleged approval of the indenture amendments in part through an improper Platinum "disclaimer

[5] Having a majority also was perceived as beneficial to Platinum because Nordlicht believed that "50 percent can override" if "25% of the bondholders . . . call a default." (Ex. 13, at 1).

[6] In fact, Shulse and Platinum were telling the marketplace exactly the opposite. In a July 17, 2014 email, JAB Energy confirmed its conversation with Shulse that "BEE [Black Elk] will use the proceeds to pay down current bond holders, pay down payables, and return some preferred equity to Platinum." (Ex. 14, at 1). The email said that "[p]er our conversation, BEE intends to make current all of the AOS payables app $2.8 million, make a large payment to JAB of between $4 and $6 million and return to the executed payment plan between BEE and JAB for outstanding balance." (*Id.*). Shulse and Platinum were falsely claiming that bondholders would be paid first, payables would be paid second, and finally some preferred equity to Platinum would be paid third. The actual intent was to make sure that Platinum got paid for its Series E preferred equity while maintaining its Note priority position.

[7] By examples, the Second Supplemental Indenture required and has the signatures of Hoffman as CEO and a Manager, Fuerst as the Secretary and General Counsel, and Small and Salfati as Managers. (Ex. 16). Shulse, as CFO, made the false representation in the Officers' Certificate that "The undersigned confirm that, excluding any Notes held by the Permitted Holders, the Issuers or any Guarantor, or by an Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Permitted Holders, the Issuers or any

of beneficial interest" in $43,293,000 of Notes that were in fact beneficially owned by Platinum affiliates. (Ex. 15).

55. Platinum also achieved the improper consent approval in part through implementation of the scheme to have "friendly" Notes bought and held by the affiliated (but undisclosed) Beechwood entities voted in favor of consent. Platinum, Nordlicht, Levy and Small were the primary architects that implemented this scheme. Platinum and its affiliates owned Beechwood in substantial part—Platinum (through Nordlicht and Murray Huberfeld) controlled over 35% of Beechwood, while Levy (and his family trusts) controlled another 5%. (Ex. 17, at ¶ 68). Upon information and belief, Platinum, including Nordlicht and Levy, formed Beechwood with two other people acting as front men for the purpose of entering into reinsurance agreements in which they would be able to control and use trust assets to benefit Platinum and themselves. (Ex. 74, at 3–4). Platinum exercised dominance and control over Beechwood.

56. In order to implement the scheme to have "friendlies" purchase and vote the Notes as directed by Platinum, Platinum installed Levy as the Chief Investment Officer and President at B Asset Manager, the investment arm of the Beechwood entities. (*See* Ex. 17, at ¶¶ 86, 90; Ex. 74). At the same time, Levy continued to work for and on behalf of Platinum with respect to Black Elk.[8] Levy began making the investment decisions for Beechwood.[9] (Ex. 17, at

Guarantor, the holders of a majority in aggregate of principal amount of the Notes outstanding have consented to the Second Supplemental Indenture." (*Id.* at 21).

[8] Levy, for example, on behalf of Platinum, but while at B Asset Manager/Beechwood and using his dlevy@beechwood.com email account, addressed the internal senior management disputes at Black Elk among Shulse, Hoffman, and Art Garza on July 13, 2014 (3 days before the Black Elk 8-K announcing the Offer to Purchase and Consent Solicitation). (Ex. 18). Upon information and belief, Beechwood also has had a number of other Platinum plants over the pertinent time period, including: Will Slota, as Chief Operating Officer; Paul Poteat, as Chief Technology Officer; David Ottensoser, as General Counsel; Daniel Small, as Senior Secured Collateralized Loans Project Manager (Small was also on the Black Elk Board of Managers); Rick Hogdon, as Chief Underwriting Officer; Daniel Saks, as B Asset Manager's Chief Investment Officer (after Levy resigned and returned full-time to

¶ 86). As Chief Investment Officer and President of B Asset Manager, Levy caused the "friendly" Beechwood entities Beechwood Bermuda International Ltd., BBIL ULICO 2014, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, and Bre BCLIC to obtain approximately $37 million worth of Notes, and then vote them as directed by Platinum and in support of its scheme. (Ex. 17, ¶¶ 90, 93–95; Ex. 21, at S-39 [listing number of Notes held by Beechwood entities, for January 2015 Northstar transaction, and consistent with Beechwood amounts in Ex. 22]; *e.g.* Ex. 23; Ex. 25; Ex. 26; Ex. 28). As Reuters has reported, "Beechwood spokesman David Goldin confirmed that Levy was responsible for Beechwood's purchase of Black Elk bonds and for voting them in Platinum's favor, along with the approval of the covenant changes." (Ex. 29, at 11).[10] As set forth in another complaint recently filed against Levy, among others, in the Southern District of New York, "In short, Beechwood, in the person of Levy, voted Beechwood-purchased bonds [and did not tender their Notes], including the Trusts' bonds, against the interests of the Trusts and Beechwood, and in favor of subordinating them to Platinum's interests, even though this vote meant that the Trusts' bonds would be exposed to greater risk of loss, because all the value of Black Elk's assets was paid to Platinum."[11] (Ex. 17, at ¶ 95).

Platinum); and Naftali Manela and Eli Rkower, who provided consulting services to Beechwood. (*See* Ex. 17, at ¶ 64; Ex. 19; Ex. 20, at 38).

[9] Levy also had signed a Securities Purchase and Put Agreement that gave New Mountain the right to put its Series E preferred equity to Platinum on or before March 24, 2014. (Ex. 20, at 20). This put was extended to August 14, 2014, after the closing of the consent date. Given that Platinum owned both Notes and Series E preferred equity, and that Platinum could be required to repurchase additional Series E preferred equity from an unaffiliated party in what it knew to be a sinking ship, Platinum had a compelling incentive to ensure that Platinum would not have to repurchase the additional Series E preferred equity under the Securities Purchase and Put Agreement.

[10] Platinum's effective control of the Beechwood Notes is illustrated in the email communications among Platinum executives on May 16, 2014 regarding Platinum lending out and getting back Black Elk Notes from B Asset Manager. (Ex. 30).

[11] A November 24, 2014 Modification Agreement between Black Elk and "the holders of [Secured Notes] named on the signature page hereto [PPVA, PPLO, PPCO, Bre WNIC Primary, Bre WNIC Sub, Bre BCLIC, Beechwood Bermuda Internation, and BBIL ULICO]" shows that the same entities that consented to the Consent and

57. In addition to the improper rigging of the vote through "disclaiming" affiliates and obtaining "friendly" votes, Platinum also made misstatements of fact in the Offer to Purchase and Consent Solicitation, including: (a) not disclosing the amount of Notes disclaimed by Platinum, (b) the relationships between the consenting parties and Platinum, and (c) Platinum's intentions to cause Black Elk to repurchase all of Platinum's Series E preferred equity, and the effect that such repurchase would have on the ability of Black Elk to continue as a going concern.

58. Black Elk's founder and then-CEO Hoffman was so troubled by Platinum's undisclosed plan to repay itself ahead of Black Elk's lenders and creditors that he emailed Black Elk's General Counsel Piche and outside counsel on June 26, 2014, stating in part his understanding that "they [Platinum] plan to isolate Black Elk, pay themselves back (preferred equity) ahead of so called friendly bond holders and lay off most people." (Ex. 2).

59. Hoffman also issued a memorandum on July 9, 2014 revoking all Black Elk employees' authority with respect to all contracts and monetary matters. (Ex. 31). Hoffman's memorandum, which stated that his approval and signature was required for, among other things, all wires, checks or other transfers of Black Elk's property, was apparently his attempt to prevent Platinum from carrying out its plan to recover its equity investment at the expense of Black Elk's lenders and creditors. (*Id.*; Ex. 32).

60. Also on July 9, after sending out his memorandum, Hoffman had an email exchange with Nordlicht in which Hoffman recognized that Black Elk was now being run by

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Solicitation Agreement hold $98 million in Secured Notes. (Ex. 118, at 1, 4–5). These entities are given a security interest and lien in cash collateral supporting bonds expected to be released shortly. (*Id.* at 1). No other Secured Note holder was given the same security, nor was the Indenture modified to permit the preferential treatment accorded the Platinum and Beechwood Secured Note Holders.

Platinum through Shulse and protested that " ." (Ex. 32). Hoffman went on to say that " " and that " "[12] (*Id.* at 1). Hoffman recognized that " " (*Id.* at 2). Hoffman feared that Platinum's interest was in "shutting down Black Elk and taking all the money out." (Ex. 4, at 76:12–13).

61. Hoffman, as CEO, also had directed the termination of Shulse, the CFO. On July 13, Levy, emailing Hoffman from his Beechwood address, directed: "As we discussed please pull back the letter [of termination] on Jeff [Shulse]." (Ex. 33, at 1). Hoffman forwarded this email to Piche, Black Elk's General Counsel, stating: "See note from Platinum usurping my decision to fire the CFO." (*Id.*) Shulse continued to work on Platinum's behalf at Black Elk. (*See id.*).

62. The purported July 14, 2014 Written Unanimous Consent of the Managers of Black Elk regarding the Renaissance Sale and the Offer to Purchase and Consent Solicitation contains the signature of Platinum's Small, but not Hoffman's signature. (Ex. 75, at 6).

63. As noted above, at the time of the Renaissance Sale, Platinum exercised control over Black Elk. Platinum now held the vast majority of the common stock in Black Elk, as well as a significant portion of Black Elk's 13.75% Senior Secured Notes, Senior Secured Revolving

[12] These sentiments are consistent with Hoffman's statement in a June 27 email to Nordlicht that "[t]he current direction runs counter to my instincts. I have fiduciary duties and no longer feel I have the capacity to exercise those duties." (Ex. 34, at 1). In that same email, Hoffman said that "I am apprehensive about the uses of the Renaissance proceeds as I feel it will put Black Elk at risk of defaulting on creditors and ruin my reputation." (*Id.*).

Credit and Series E preferred equity units. (Ex. 6 at 11–12, and at 20–Capital Contributions; Ex. 35, at 3–5).

64. On July 16, 2014, Black Elk filed a Form 8-K with the SEC announcing that it had made a tender offer to, and solicited consent from, holders of its 13.75% Senior Secured Notes that, among other things, allowed Note Holders to tender their notes and sought to change certain covenants that would enable Black Elk to retire Series E preferred equity ahead of the Notes. (Ex. 36, at Item 7.01–Regulation FD Disclosure).

65. Platinum dominated and controlled the Renaissance Sale closing, as well as the Offer to Purchase and Consent Solicitation. On August 12, 2014, Daniel Small, on behalf of Platinum, emailed David Levy at his Beechwood email address to ask whether he had "signed the releases for the [Renaissance] sale?" Levy responded one minute later from his iPad, "No what do I need to do !" At 10:49 pm, Small then instructed Levy: "David, sign the attached document and forward it to Russell Diamond for counter-signature and copy Jeff [Shulse at Black Elk]." Small then further instructed Shulse: "Jeff, concurrent with David sending to Russell send Russell the NSAI reserve report excluding the properties sold to Renaissance so he can calculate the hedges that need to be unwind." (Ex. 37). The next day, August 13, 2014, Levy, as President of B Asset Manager LP, executed and provided consent for the Renaissance Sale. (Ex. 38).

66. On August 14, 2014, Black Elk, under the influence of Platinum, issued a press release falsely claiming that "holders of $110,565,000 principal amount of the Notes, or 73.71% of the Notes, had validly consented to the Consent Solicitation and not revoked such consent." (Ex. 39; *see also* Ex. 28). Any questions were to be directed to Fuerst. (Ex. 39). These alleged

results were achieved only by improperly including all of the Platinum controlled, but "deemed not affiliated" and "friendly" votes.[13]

67. On August 15, 2014, Black Elk issued a Form 8-K announcing that it had received consent from holders of its 13.75% Senior Secured Notes to, among other things, apply the proceeds from the Renaissance Sale to retire the tendered 13.75% Senior Secured Notes and to utilize the remaining proceeds to re-purchase preferred equity issued by Black Elk. (Ex. 40, at Item 1.01 and 303). The consent was memorialized in a Second Supplemental Indenture. (Ex. 6, at 11). Again, it was only by improperly including the votes of the affiliated Platinum-controlled, but "disclaimed" or "friendly" entities, that consent allegedly was obtained.

68. Beginning on August 15, 2014, Black Elk received the following wire transfers relating to the Renaissance Sale:

Date	Account No. Amegy Bank	Wire Description	Amount
8/15/2014	[redacted]	RENAISSANCE OFFSHORE, LLC;REF M 1306804969	$ 99,999,999.99
8/15/2014	[redacted]	RENAISSANCE OFFSHORE, LLC;REF M 1306804970	$ 19,240,898.44
8/15/2014	[redacted]	PETROLEUM STRATEGIES, INC.;OBI 1306804015	$ 5,713,164.64
8/22/2014	[redacted]	RENAISSANCE OFFSHORE, LLC;REF M 1306604221	$ 1,059,810.55
		Total	$126,013,873.49

(Ex. 41).

69. On August 18, 2014, three days after the first three Renaissance wire transfers to Black Elk, Shulse again followed up with Platinum regarding his reward. In an email to

[13] This representation also directly contradicts the method of tabulating results set forth in the Offer to Purchase and Consent Solicitation. (Ex. 1, at 2, 18–19), and as stated in Black Elk's press release of July 16, 2014: "If Consents from the holders of at least a majority in principal amount of the outstanding Notes (disregarding any Notes held by affiliates of the Company) have been received . . . ." (Ex. 36; at 99.1–Press Release; *see also* Ex. 101, at 2).

Nordlicht, Small and Levy, Shulse said that "[REDACTED]"[14] (Ex. 42, at 1 (emphasis added)). Shulse again reminded Platinum that "[REDACTED]" (*Id.*). That same day, in an email to Levy and Small, Nordlicht said that "[REDACTED]." (*Id.*).

70. Platinum circumvented Hoffman's authority as President and CEO of Black Elk by directing Shulse, based upon the approval of the Platinum-affiliated managers and the alleged (but untrue) unanimity of the Black Elk board of managers, to make the subject transfers without Hoffman's approval or signature. As noted above, Shulse and Platinum were in that same timeframe negotiating Shulse's financial remuneration. (Ex. 44, at 35–39; Ex. 45). On information and belief and based upon the sworn statements of Hoffman, Platinum agreed to pay Shulse bonuses in the total amount of $550,000, in large part for his involvement and assistance in the Renaissance Sale. (Ex. 45; *see also* Ex. 46, at 10). Notably, Hoffman had fired Shulse on three occasions in part because Hoffman believed that Shulse was acting in Platinum's best interest at the expense of Black Elk. (Ex. 4, at 67–69, 134–137). Each time, Platinum reinstated Shulse. Immediately following the Renaissance Sale, Platinum appointed Shulse as Black Elk's CEO after reaching a deal with Hoffman to resign as Black Elk's President and CEO. (*Id.*; Ex. 47, at Item 5.02–Departure of Directors or Certain Officers).

[14] The August 18–21, 2014 wire transfers for the Series E preferred equity no doubt worsened Black Elk's insolvency. However, Black Elk was insolvent months earlier. By example, Shulse, in a May 20, 2014 email, stated "[REDACTED]" (Ex. 43).

71. **The money grab.** E-mail communications on August 18, 2014 by and between Nordlicht, Shulse, Small, Salfati and Levy demonstrate the mechanics of the final implementation of the plan to improperly transfer nearly $98 million from Black Elk to Platinum. That day, Shulse emails Nordlicht, with the subject line, "Wire is NOT approved," explaining that Shulse understood that Nordlicht was "talking to John [Hoffman] at 4:00, [but] the wire deadline is 3:30 ... if you want New Mountain paid today, you are going to have to make a decision soon. I am happy to hit send if the board tells me to, if not it will likely be tomorrow John approves at 4:00." (Ex. 48).

72. Five minutes later on August 18, 2014, Nordlicht sent an email to Shulse, copying Small, Salfati and Levy, in which Nordlicht represented that "the board is in agreement to send new mountain wire and 50 million to ppbe. ZThe [sic] balance of the preferred I am going to get you john email so u have unanimous consent on top of his verbal agreement that he has already given me … but send these wires out already!!!!!" (*Id.*). At approximately the same time, Daniel Small also emailed Shulse, copying Salfati: "Jeff, on behalf of Sam Salfati and myself constituting a majority of the board of managers you are hereby authorized to wire $70MM in partial payment of Preferred E units." (Ex. 49). Based on Nordlicht's emphatic, five exclamation point email, and Small's confirmatory email, Shulse then authorized and requested the release of the wires "per Mark's [Nordlicht's] direction[.]" (Ex. 48).

73. On August 18, David Levy, from his Platinum email address, also sent Shulse, at his personal email address, the PPCOMF wire transfer instructions. (Ex. 50, at 2). On August 20, Shulse then forwarded these instructions with the direction to Black Elk employees that "[t]he board has also requested and approved the payment of $24,600,584.31 of Series E

preferred to Platinum Partners Credit Opportunities Master Fund LP … wire instructions below ... needs to go today[.]" (*Id.*).

74. Between August 18 and 21, 2014, Black Elk remitted the following wire transfers, pursuant to the instruction of Platinum, and particularly the involvement and direction of Nordlicht, Levy, Small, Salfati, Fuerst and Shulse. (*Id.*; Ex. 48):

Date	Account No. Amegy Bank	Wire Description	Amount
8/18/2014		PPVA Black Elk Equity LLC 1307003426	$ 32,563,819.73
8/18/2014		New Mountain Finance Corp 1307003422	$ 20,462,777.78
8/18/2014		Platinum Partners Value Arbitrage 1307003428	$ 15,332,672.97
8/19/2014		The Bank of New York Mellon 1306701696	$ 11,773,608.13
8/20/2014		Platinum Partners Credit Opportunity 1306102280	$ 24,600,584.31
8/21/2014		Platinum Partners Liquid Opportunity 1306101216	$ 5,000,000.00
		Total	$109,733,462.92

(Ex. 76).

75. These remittances, except for the Bank of New York Mellon for the tendered Notes, all benefitted Platinum. The benefit of the transfers to the named Platinum entities is obvious.

76. The New Mountain transfer also benefitted Platinum because Platinum was able to avoid buying back the New Mountain Series E preferred equity under a put agreement. Platinum and New Mountain Finance Holdings, LLC entered into a Securities Purchase and Put Agreement in May 2013 in which New Mountain Finance Holdings, LLC paid $20 million for Series E preferred equity, with the right to have PPVAF and PPVA BE repurchase the Series E preferred equity on a dollar-dollar basis, plus any accrued, uncapitalized, and unpaid Series E

preferred return, plus interest. (Ex. 20). New Mountain Finance Holdings, LLC entered into this Agreement based in part upon the fact that Platinum controlled Black Elk: the agreement recites that "Platinum, along with one or more of its affiliates, beneficially owns a majority of Black Elk Energy's outstanding voting membership interests and a majority of Black Elk Energy's outstanding membership interests[.]" (*Id.* at 1). New Mountain Finance Holdings, LLC then assigned the agreement to New Mountain Finance Corp. by second amendment dated May 23, 2014. (Ex. 87). A third amendment further extended the put agreement to July 16, 2014. (*See* Ex. 78). A fourth amendment extended the time to August 15, 2014. (Ex. 79).

77. These remittances improperly enriched Platinum by approximately $98 million.[15] On August 19, 2014, Black Elk, under Hoffman's signature, instructed Bank of New York Mellon to extinguish $11,433,000 of notes tendered. (Ex. 52).

78. Although Platinum improperly benefitted by almost $100 million,[16] the effect on Black Elk was equally stark but devastating. As Black Elk's founder and CEO Hoffman has testified, "As soon as the 96 million went to New York [to Platinum], we [Black Elk] were bankrupted." (Ex. 4, at 130:8–9). When asked whether Black Elk was insolvent after the wire

[15] Liskow & Lewis withdrew as counsel for Black Elk on or around July 21, 2014 in part because of the "several calls from [Black Elk] employees raising questions about the use of proceeds from [Renaissance] asset sales." (Ex. 51). Liskow & Lewis stated that "[t]hese recent developments and conflicts made us uncomfortable with continuing to advise [Black Elk] and therefore led us to conclude that we needed to withdraw from any further representation of the company, other than to continue assisting in the imminent closing of the Renaissance Offshore, LLC sale (the 'Renaissance Transaction') if [Black Elk] so desires." (*Id.*) Liskow & Lewis made clear that "we do not and have not advised [Black Elk] on how the proceeds from the Renaissance Transaction or any other sale transaction are to, or were to, be applied…." (*Id.*).

[16] The impropriety of Platinum's actions is forcefully stated in the resignation letter of one of Black Elk's executives, who concluded his resignation letter with the following: "For these reasons I resign my position as Facilities Manager as I cannot legally and morally continue forward knowing I will be taking part of fraudulent activities." (Ex. 53).

transfers to Platinum, Hoffman unequivocally responded "Absolutely" and "No question."[17] (*Id.* at 130:12–16).

79. Nearly a year later, on the threshold of Black Elk's bankruptcy, Black Elk's auditors, BDO, voiced suspicions about the Renaissance transaction. BDO told Black Elk, Platinum, and Levy that it wanted "a full breakdown of where every dollar went from the renaissance transaction including a breakdown of the payouts to platinum and its related entities." (Ex. 89, at 1). BDO said what it thought of the Renaissance transaction: it "wanted to state in the notes that [it] believe[d] this transaction violated the indenture and was a preferential payment[.]" (*Id.*).

V. APPLICATION FOR INJUNCTIVE RELIEF

A. Legal Standard

1. Bankruptcy courts' injunctive powers under section 105 and Federal Rule of Bankruptcy Procedure 7065

80. Section 105, in conjunction with Federal Rule of Civil Procedure 65(b), made applicable herein by Federal Rule of Bankruptcy Procedure Rule 7065, gives a bankruptcy court the power to issue a temporary restraining order and preliminary injunction if it appears from the facts that immediate and irreparable injury, loss, or damage will result to the applicant. 11 U.S.C. § 105; Fed R. Civ. P. 65; *In re CDP Corp., Inc.*, 462 B.R. 615, 629 (Bankr. S.D. Miss. 2011).

2. Injunctive Relief under 11 U.S.C. Section 105

81. Section 105 provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105; *In re*

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[17] In October 2014, as things worsened at Black Elk, Shulse sent an email to Nordlicht, Small, and Levy describing the risks and likely adverse results from pending litigation. (Ex. 80). Levy first chastised Shulse for not including Fuerst, saying "I'm sure you meant to add Steve to this and note it is a privileged communication part of litigation." (*Id.*) To that, Nordlicht responded "All the more reason to pay back preferred and get the positive fields sold[.]" (*Id.*) Shulse, incredulous that Nordlicht just described the Series E preferred equity scheme, emailed Small: "He really just put that in writing? … With all due respect, some things should just stay in his head?" (*Id.*). Platinum understood that after it misappropriated the Renaissance Sale proceeds, Black Elk was a dead company walking.

CDP, 462 B.R. at 628. Section 105 grants extensive equitable powers to bankruptcy courts, permitting them to perform their statutory duties and "fashion such orders as are necessary to further the substantive provisions of the Bankruptcy Code." *Matter of Sadkin*, 36 F.3d 473, 478 (5th Cir.1994) (quoting *Chiasson v. Bingler (In re Oxford Mgmt. Inc.)*, 4 F.3d 1329, 1333 (5th Cir.1993)). In the Fifth Circuit, injunctive relief under Section 105(a) is subject to the usual rules for the issuance of an injunction under Federal Rule of Civil Procedure 65. *In re CDP*, 462 B.R. at 629; *Matter of Zale Corp.*, 62 F.3d 746, 765 (5th Cir. 1995).

3. Injunctive Relief under Federal Rule of Bankruptcy Procedure Rule 7065

82. Federal Rule of Civil Procedure 65 is applied to adversary proceedings by Federal Rule of Bankruptcy Procedure Rule 7065, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor-in-possession without compliance with Rule 65(c), which addresses the security required by a movant. Courts have ordered injunctive relief in the form of a preliminary injunction to prevent fraudulent transfer defendants from dissipating estate assets pending the resolution of avoidance claims and have extended this injunctive relief to cover non-party entities and companies. *In re Sledziejowski*, 533 B.R. 408, 423 (Bankr. S.D.N.Y. 2015) (discussing contempt liability for non-parties regarding a fraudulent transfer adversary action and extending a preliminary injunction to enjoin these nonparties); *see also* Fed R. Civ. P. 65(d)(2)(C) (non-parties can be bound by injunctive relief).

83. In the Fifth Circuit, plaintiffs must establish the following four elements to secure a preliminary injunction:

> (a) a substantial likelihood that the movant will prevail on the merits; (b) a substantial threat that the movant will suffer irreparable injury if the injunction is not granted; (c) that the threatened injury to the movant outweighs the threatened harm an injunction may cause the party opposing the injunction; and (d) that the granting of the injunction will not disserve the public interest.

Janvey v. Alguire, 647 F.3d 585, 595 (5th Cir. 2011) (citing *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)); *In re CDP*, 462 B.R. at 629.

84. The Fifth Circuit applies a sliding scale when analyzing the degree of "success on the merits" a movant must demonstrate to justify injunctive relief. *In re CDP*, 462 B.R. at 629 (citing *In re Hunt*, 93 B.R. 484, 492 (N.D.Tex.1988)). This involves "balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits." *Id.* (quoting *Florida Medical Ass'n v. United States*, 601 F.2d 199, 203 n.2 (5th Cir.1979)). For example, if "the other factors are strong, a showing of some likelihood of success on the merits will justify temporary injunctive relief." *Id.* (quoting *Productos Carnic, S.A. v. Central Am. Beef & Seafood Trading, Co.*, 621 F.2d 683, 686 (5th Cir. 1980)).

B. Application of the Four Injunctive Relief Factors to This Case

1. A substantial likelihood exists that the Trustee will prevail on the merits

85. To demonstrate a likelihood of success on the merits, a plaintiff "is not required to present sufficient evidence to prove [his] entitlement to summary judgment." *Janvey*, 647 F.3d at 595–96 (quoting *Byrum*, 566 F.3d at 446) (alterations in original). Though the plaintiff must present a prima facie case, he need not show that he is "certain to win." *Id.* (quoting Wright & Miller, 11A Fed. Prac. & Proc. § 2948.3 (2d ed. 1995)). Instead, once the plaintiff presents its prima facie case the court will assess the likelihood of success on the merits by looking to "standards provided by the substantive law." *Id.* (quoting *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir.1990)). For example, if a party seeks an injunction contending that there is liability under TUFTA, "the trial court may find substantial likelihood of success on the merits when it is 'presented with evidence of intent to defraud the creditor.'" *Id.* (quoting *Tanguy v. Laux*, 259 S.W.3d 851, 858 (Tex. App.—Houston [1st Dist.] 2008, no pet.)).

86. The eventual success or failure of the Trustee's various causes of action regarding Defendants all hinge on one core determination: whether $97,959,854.79 of the $126,013,873 that the Debtor received from its August 2014 sale of assets to Renaissance, was fraudulently conveyed to the Defendants or for their benefit. The Trustee can establish a prima facie case of a fraudulent conveyance of $77,497,077.01 to the Defendants, who are the subject of this Application, allocated as follows: PPVAF ($15,332,672.97); PPCOMF ($24,600,584.31); PPLOMF ($5,000,000.00); and PPVA BE ($32,563,819.73). Additionally, PPVA and PPVA BE caused $20,462,777.78 to be transferred for its benefit, to satisfy its financial obligations to New Mountain Finance Corp.

a. Count I—Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(A)

87. The facts regarding the transfer of $97,959,854.79 to the Defendants or for their benefit confirm that there is a substantial likelihood that the Trustee will prevail on the merits because they support a finding of actual fraud by the Defendants pursuant to § 548(a)(1)(A).[18] As described above and in the Adversary Complaint, by December 31, 2013, months before the Renaissance Sale, the Defendants dominated and controlled Black Elk, exerting control over its day-to-day operations. (Ex. 3, at 33; Ex. 4, at 17; Ex. 53).

88. On July 10, 2014, Black Elk arranged to receive over $126 million through the Renaissance Sale. (Ex. 7; Ex. 6, at 6; Ex. 8; Ex. 4). Though desperately in need of funds to pay vendors, Black Elk, at the direction of Platinum, used the majority of the Renaissance Sale

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[18] Pursuant to §548(a)(1)(A) of the Bankruptcy Code, a trustee (or Debtor in Possession) may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

> (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted;

11 U.S.C. § 548(a)(1)(A) *et seq*.

proceeds to retire Black Elk's series E preferred equity shares, which provided no real value to Black Elk. (Ex. 6, at n.9). The transfers to the Defendants and to New Mountain of $97,959,854.79 of Renaissance Sale proceeds occurred at the direction of Platinum and against the wishes of Black Elk's founder and then-CEO and President John Hoffman, who did not authorize the transfers. (Ex. 31; Ex. 32; Ex. 4, at 134; Ex. 75). The transfers also occurred between August 18 and August 21, 2014, less than two years before the August 11, 2015 Petition Date. (Ex. 41).

89. There are creditors of the Debtor who have allowable claims against the Debtor which claims were in existence at the time of the transfers. (Ex. 4, at 81–92). The subject transfers were made by the Debtor with actual intent to hinder, delay, or defraud its then existing and future creditors. On July 9, 2014, Black Elk's then CEO and President Hoffman issued a memorandum revoking his employees' authority with respect to contracts and monetary matters and insisting that his approval and signature was required for, among other things, all wires, checks or other transfers of Black Elk's property. (Ex. 31; Ex. 4, at 134). This was apparently Hoffman's attempt to block Defendants' effort to intentionally hinder, delay, or defraud Black Elk's then existing and future creditors. (Ex.31; Ex. 32). Only a few weeks later, in August 2014, Black Elk intentionally circumvented Hoffman's attempt to prevent the transfers by enticing Black Elk's then CFO, Jeff Shulse, to transfer $97,959,854.79 to the Defendants and for their benefit. (Ex. 48; Ex. 49). Two months later, on October 13, 2014, Platinum president, Mark Nordlicht, felt so comfortable about the Defendants' longstanding scheme to loot the assets of Black Elk, that, in the course of discussing with Shulse a potential negative outcome in pending litigation, Nordlicht stated "All the more reason to pay back preferred and get the positive fields sold." (Ex. 80).

90. In sum, numerous "badges of fraud" evidence Defendants' fraudulent intent in connection with the transfers the Trustee seeks to avoid, including but not necessarily limited to the following: (i) the transfers were made to insiders of Black Elk—namely, Platinum affiliates; (ii) the transfers were concealed or effectuated via fraudulent representations, including but not limited to those contained in the Offer to Purchase and Consent Solicitation Statement; (iii) the transfers were substantially all of Black Elk's productive assets (or the proceeds thereof)—namely, the proceeds from the sale of Black Elk's primary oil and gas assets in the Renaissance Sale; (iv) the value of the consideration received by Black Elk was not reasonably equivalent to the value of the transfers, as Black Elk obtained essentially no benefit from the redemption of Platinum's Series E equity; (v) Black Elk was insolvent both before and after the transfers were made; and (vi) Black Elk agents under Defendants' control engaged in a pattern of obviously sharp dealing prior to bankruptcy. *See West v. Seiffert (In re Houston Drywall, Inc.*, 2008 WL 2754526, at *20 (Bankr. S.D. Tex. July 10, 2008).

b. Count II—Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(B)

91. The same facts that support a finding of actual fraud by the Defendants also support a finding of constructive fraud pursuant to §548(a)(1)(B).[19]

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[19] Pursuant to §548(a)(1)(B) of the Bankruptcy Code, a trustee (or Debtor in Possession) may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

> (B)
> (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> (ii)
>
> > (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
> >
> > (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

92. The transfer of $97,959,854.79 to and for the benefit of the Defendants and New Mountain to repurchase the Series E shares provided no real value to Black Elk, particularly given the significant debts that Black Elk could have paid with these funds. In fact, the transfers rendered Black Elk's critical pre-sale financial condition even more desperate because Black Elk disposed of significant Black Elk assets without reaping a corresponding benefit.

93. Moreover, Black Elk was insolvent both before and after the transfers occurred. As of August 17, 2014, the date the July 10, 2014 PSA closed, Black Elk was unable to fully pay its debts without intervention. (Ex. 43). Black Elk's SEC filings before and after the transfers consistently reflected a Member Deficit, signifying that Black Elk's total liabilities exceeded its total assets, a textbook definition of insolvency. (Ex. 3, at 126; Ex. 6, at 5).

94. Before the Renaissance Sale, Black Elk was "stretch[ing]" accounts payable, at times taking more than a year to pay vendors. (Ex. 3, at 53; Ex. 100). On July 2, 2014 Black Elk's management recognized the company's dire financial condition immediately prior to executing the PSA, calling the remaining assets a "cancer" on Black Elk's balance sheet and advocating using the Renaissance Sale proceeds to acquire additional productive assets. (Ex. 35). Perhaps the most telling evidence of Black Elk's dismal financial circumstances was an August 18, 2014 email sent by CFO Shulse, a trained accountant, to Platinum stating that he viewed the equity of the business as worthless. Shulse opined that Black Elk's "[redacted]" a clear conclusion of insolvency. (Ex. 42). Despite this startling conclusion by

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> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1)(B) *et seq*.

Black Elk's CFO, from August 18 to August 21, Shulse transferred $97,959,854.79 of the Renaissance Sale proceeds to or for the benefit of the Defendants. (Ex. 48; Ex. 49).

95. Black Elk management's internal assessment of its equity as worthless and its post-sale assets as a cancer also support a determination that Black Elk's remaining property after the transfers was an unreasonably small capital. Given Black Elk's dire condition before the Renaissance Sale, the Defendants had to know that the transfers would leave Black Elk in an even worse position than before the sale. Post-sale, Black Elk was not only unable to pay its debts, it now had significantly less assets to use to arrange debt payments.

c. Count III—Violations of the Texas Uniform Fraudulent Transfer Act

96. The same facts that support a finding of liability under Section 548 of the Bankruptcy Code also support a finding of violations of the Texas Uniform Fraudulent Transfer Act ("TUFTA"). Tex. Bus. & Com. Code Ann. § 24.005 and 24.006.[20] As it relates to the

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[20] Tex. Bus. & Com. Code Ann. § 24.005(a) defines transfers fraudulent as to present or future creditors as:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Tex. Bus. & Com. Code Ann. § 24.005(a).

Tex. Bus. & Com. Code Ann. § 24.006 defines transfers fraudulent as to present creditors as:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Renaissance Sale and the Series E wire transfers, these transfers to Platinum and its affiliates were fraudulent as to Black Elk's present and future creditors and in violation of TUFTA, as set forth above. The $97,959,854.79 in wire transfers to and for the benefit of Platinum are likewise in violation of § 24.006 of TUFTA. Defendants are liable as the recipient transferees of these funds and the financial beneficiaries of the transfers. These transfers were intentional and initiated by Platinum, which controlled the Debtor's board of directors and caused the Debtor to make the transfers.

d. Count IV—Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550

97. Section 550 of the Bankruptcy Code[21] allows the trustee or debtor-in-possession to recover, for the benefit of the estate, the property or the value of the property transferred and avoided under sections 544 and 548 from the initial transferee of such transfer or the entity for whose benefit such transfer was made. Here, as set forth above, the Trustee is entitled to avoid, under section 548, transfers to and for the benefit of Defendants of $97,959,854.79. Defendants are the initial transferees or persons for whose benefit the transfers were made. Thus, pursuant to section 550 of the Bankruptcy Code, the Trustee is entitled to recover the amounts transferred.

> (b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Tex. Bus. & Com. Code Ann. § 24.006.

[21] Pursuant to § 550 (a) of the Bankruptcy Code, except as otherwise provided, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of Title II, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

> (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
>
> (2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 550 (a) *et seq*.

2. The dissipation of assets and multiplicity of actions that would result if a TRO and preliminary injunction are not granted constitute a threat of irreparable injury

98. To meet its burden concerning the second element of the preliminary injunction standard, the Trustee "must demonstrate that if the district court denied the grant of a preliminary injunction, irreparable harm would result." *Janvey*, 647 F.3d at 600 (citing *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir.1985)); Fed. R. Civ. P. 65(b)(1)(A). In general, harm is irreparable where there is no adequate remedy at law, such as monetary damages. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir.1975). However, the Fifth Circuit has stated that "the mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Janvey*, 647 F.3d at 600. The dissipation of assets that are the subject of a suit would impair a court's ability to grant an effective remedy. *Id.* (affirming an injunction which froze the accounts of numerous former advisors and employees of an investment company, pending the outcome of a trial alleging that the investment company was part of a Ponzi scheme). And, when the relief sought is the "avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim," then this relief ultimately is equitable in nature. *Id.* (citing Tex. Bus. & Com. Code § 24.008(a)(1)).

99. Applying these principles, courts in this circuit have issued injunctions freezing the assets of a defendant following a fraudulent transfer, as occurred here. *See*, *e.g.*, *A.T.N. Indus., Inc. v. Gross*, 632 F. App'x 185, 192 (5th Cir. 2015) (finding no abuse of discretion in district court injunction freezing defendants' funds alleged to have been fraudulently transferred); *Kalsi Eng'g, Inc. v. Davidson*, 2014 WL 12540550, at *2 (S.D. Tex. Sept. 2, 2014) (issuing preliminary injunction to "protect such funds and assets that are the subject of this dispute" and ordering freeze on defendant's accounts); *In re Atlas Fin. Mortg., Inc.*, 2014 WL

172283, at *1 (Bankr. N.D. Tex. Jan. 14, 2014) (denying Trustee's motion for writ of attachment, but granting Trustee's request for preliminary injunction prohibiting defendant from transferring properties following alleged fraudulent transfers); *see also Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007) (in Lanham Act and related state tort case, stating that "[b]ecause Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze."); *In re Focus Media Inc.*, 387 F.3d 1077, 1087 (9th Cir. 2004) (affirming issuance of preliminary injunction freezing $20 million in assets of debtor's sole shareholder following fraudulent transfer); *USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 97 (6th Cir. 1982) (upholding injunction freezing defendants' assets; injunction "preserves assets for which the defendants may be accountable under a constructive trust"); *In re Desai*, 2012 WL 6737483, at *6 (Bankr. D. Mass. Dec. 28, 2012) (issuing injunction prohibiting defendants from transferring or spending assets following alleged fraudulent transfers).

100. Courts have likewise found where a transaction can be viewed as a single unified transaction, courts may freeze assets to prevent parties from benefitting from structuring a transaction around the avoidance provisions of the Bankruptcy Code. *See* Commercial Bankruptcy Litigation § 11:40 ("The collapsing doctrine, also called the single unified transaction theory, prevents parties from structuring a transaction around the avoidance provisions of the Bankruptcy Code. . . . If the numerous steps taken to transfer the debtor's property can reasonably be collapsed into a single integrated plan that either defrauds creditors or leaves the debtor with less than equivalent value, the transaction is avoidable."); *In re James River Coal Co*., 360 B.R. 139, 163 (Bankr. E.D. Va. 2007) (holding that trustee pled facts sufficient to establish put obligation as a single unified transaction); *see also Matter of Besing*,

981 F.2d 1488, 1492 (5th Cir. 1993) ("Congress intended for the Code's definition of 'transfer' to be as broad as possible."); *In re Best Prod. Co., Inc*., 157 B.R. 222, 229 (Bankr. S.D.N.Y. 1993) ("[C]ollapsing transactions is little more than an effort on the part of the court to focus not on the formal structure of a transaction, but rather on the knowledge or intent of the parties involved in the transaction.").

101. This doctrine applies with force where as part of a single unified transaction Platinum structured the transfer of Renaissance Sale proceeds to repurchase Series E Preferred Units, including Series E Units from New Mountain to satisfy Platinum's put obligation. Although the bulk of the funds from the Renaissance Sale were transferred straight into Platinum accounts to repurchase Platinum Series E Units, Platinum transferred one sum to New Mountain to avoid a put obligation. Under the Securities Purchase and Put Agreement with Platinum and Black Elk, New Mountain bought $20,000,000 of Series E Preferred Units based on Platinum's agreement to repurchase from New Mountain all and not less than all of the Series E Units at the purchase price plus interest and other added amounts. (Ex. 20). The Purchase and Put Agreement recites that New Mountain "would not enter into this Agreement without the protections afforded by, among other things, the Put Option[.]" (*Id.* at 2). Platinum's deadline to repurchase the Series E Units had been extended twice but the deadline for satisfying the obligation to repurchase was now August 15, 2014. Rather than pay the $20 million to repurchase the Series E from its own accounts, Platinum directed and caused Black Elk to use $20,462,777.78 of proceeds from the Renaissance sale to buy back the shares. Those funds belonged to the Senior Note Holders, to Black Elk, and to the trade creditors and should be frozen.

102. Likewise, courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions. *Janvey*, 647 F.3d at 600 ("[W]e agree with the district court that the Receiver successfully show[ed] that the threatened harm—dissipation of the assets that are the subject of this suit—would impair the [district court's] ability to grant an effective remedy." (internal quotation marks omitted)). In *Lee v. Bickell*, 292 U.S. 415, 421 (1934), the Supreme Court stated that "we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction." Accordingly, the Fifth Circuit has stated that, "where a district court has determined that a meaningful decision on the merits would be impossible without an injunction, the district court may maintain the status quo and issue a preliminary injunction to protect a remedy, including a damages remedy, when the freezing of the assets is limited to the property in dispute or its direct, traceable proceeds." *Janvey*, 647 F.3d at 600 (citing *Productos Carnic*, 621 F.2d at 686–87). Similarly, in *Productos Carnic*, the Fifth Circuit stated that "even were [plaintiff's] remedy limited to damages, an injunction may issue to protect that remedy." 621 F.2d at 686–87. Finally, a showing of "[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *Succession of Roy*, 777 F.2d at 997 (citing *Carter v. Heard*, 593 F.2d 10, 12 (5th Cir.1979)). Rather, the plaintiff must show that the threatened harm is actual and imminent. *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975).

a. Platinum's fraudulent business practices put it on a slow but certain downward spiral from a $1.3 billion fund with flawless annual returns to an embattled fund seeking liquidation

103. As a result of its fraudulent and possibly criminal business practices, Platinum has gone in the course of one year from holding $1.3 billion under management and generating average annual returns of 17 percent (on par with the world's best-performing hedge funds) to being mired in legal and financial scandals that have culminated with it filing a Chapter 15

bankruptcy proceeding in the Southern District of New York. (Ex. 102; Ex. 103). Platinum's snowballing woes threaten to deplete any funds that may remain to pay back cheated creditors and investors, underscoring the exigent need for injunctive relief. If the fraudulently transferred assets (or an amount equal to that amount of money) are not frozen, the Trustee will be irreparably harmed. Platinum will either cease to exist, have its assets taken by other creditors, or successfully dissipate the assets itself. One of these scenarios is all but certain to play out given Platinum's precarious legal and financial state.

b. Explosive revelations that Platinum and its CIO are under criminal investigation follow arrest of Platinum co-founder

104. Although concerns about its practices and finances had been expressed earlier,[22] Platinum's simmering troubles boiled to the surface in June of 2016. On June 8, 2016, Platinum co-founder and part-owner Murray Huberfeld was arrested in New York on federal corruption charges for allegedly paying the president of a correction officers' union a $60,000 bribe in exchange for a $20 million investment of union funds in Platinum. (Ex. 104; Ex. 72; Ex. 73). Law enforcement agents subsequently raided Platinum's Manhattan headquarters, and the press reported that a criminal fraud investigation into Platinum itself and into Nordlicht was ongoing. (Ex. 105; Ex. 106). By July 2016, the press was reporting at least eight different government agencies probing into Platinum's operations, including the U.S. Attorney's Offices for the Eastern and Southern Districts of New York, the Department of Justice, the FBI, the U.S. Postal Inspection Service, the New York Police Department Internal Affairs Bureau, the Internal

[22] An October 21, 2015 Bloomberg article raised numerous "red flags" on Platinum's "nearly flawless returns," noting that many of the fund's dealings have "ended in death, litigation, or handcuffs." Some of the "red flags" described in the article included: (i) an outside broker doing business with Platinum being sanctioned by regulators for running a scheme to profit from the imminent deaths of terminally ill patients; (ii) criminal charges being filed against the Debtor, which had been Platinum's biggest investment, for an offshore explosion that killed three workers; (iii) the arrest of a former head of an energy company in which Platinum had significant stake being arrested for tax evasion; (iv) the fund having escaped sanction and even thriving while investing hundreds of millions of dollars in what turned out to be two Ponzi schemes; and (v) a valuation report showing that much of Platinum's portfolio is made up of illiquid, hard-to-value assets. (Ex. 102, Bloomberg article, October 21, 2015).

Revenue Service, and the U.S. Securities and Exchange Commission. (Ex. 104; Ex. 105; Ex. 107).

c. Platinum's troubles mount until it is forced to announce a shutdown of PPVAF and PPCOMF, its largest funds

105. Questions regarding Platinum's liquidity and overall financial condition soon followed. At a June 15, 2016 hearing in a New York state action filed against Platinum after it failed to repurchase notes under a $30 million put option, the court cast serious doubt on Platinum's ability to repay its $30 million debt—relative pocket change in comparison to the $1.3 billion Platinum claimed (and still claims on its website) to have under management. The court told Platinum that "I haven't seen . . . any proof from you that the fund is worth a billion dollars. As far as I know, the fund is worth five cents." (Ex. 108, at 15:19-21).

106. Subsequent developments only confirmed the depth and intractability of Platinum's liquidity issues. Around the same time as the New York state court hearing, Platinum suspended redemptions from its flagship PPVAF fund and stopped giving performance updates. (Ex. 109). On a June 14, 2016 conference call, Platinum told its investors that negative media attention and requests for the return of capital had forced it to begin liquidation of PPVAF (recipient of over $15 million of Black Elk's money). (Ex. 109; Ex., 106). On July 20, 2016, Platinum announced in a letter to investors that it would liquidate PPCOMF (recipient of over $24 million) as well. (Ex. 107). However, Platinum did not actually commit to giving its investors cash matching the full investment gains the firm reported—hinting that Platinum did not actually have the kind of money that it claimed to have. (Ex. 106).

d. Platinum continues to try to evade its U.S. creditors and investors by filing a Chapter 15 bankruptcy proceeding

107. Indeed, Platinum's investors likely will never be paid back the full amount that they are owed. On July 28, 2016, an investor and shareholder in Platinum Partners Value

Arbitrage Fund (International) Limited, the so-called offshore version of PPVAF, filed a creditor's petition in the Cayman Islands alleging that Platinum had not honored a redemption request and seeking liquidation of the international fund. (Ex. 110). On August 23, 2016, PPVAF filed a petition in the Caymans court seeking voluntary liquidation to proceed in the Caymans "on the ground that [it] is unable to pay its debts and is therefore insolvent." (Ex. 111). The same day, the Caymans court entered a winding up order placing the international fund in liquidation. (Ex. 112). Less than a week later, on August 29, 2016, the Caymans court ordered PPVAF placed in provisional liquidation pending a final hearing on PPVAF's winding up petition. (Ex. 113). It was inevitable, then, when on October 19, 2016, Platinum filed a Chapter 15 bankruptcy petition in the Southern District of New York, attempting to shield its U.S. assets from creditors while the insolvency proceedings are underway in the Cayman Islands. (Ex. 114).

e. Platinum is suffering severe liquidity problems and threats of substantial asset devaluation, requiring emergency triage

108. PPVAF's Chapter 15 petition sounds the alarm not just for the Trustee, but for all of Platinum's creditors, investors and would-be plaintiffs. First, it is plain from Platinum's deft maneuver that Platinum intends to prevent the Trustee and the trade creditors of Black Elk, who have been pursuing recovery in the Black Elk bankruptcy for more than a year, from recovering a penny from Platinum in the proceeding. Platinum's liquidation plans appear to favors its "friendlies" to keep the money while Platinum's U.S. creditors are out of luck.

109. Second, the petition paints a gloomy picture for Platinum's long-term prospects. According to the petition, Platinum reported assets of $1.09 billion for its flagship funds as of June 30, 2016 and potential liabilities of about $468.7 million (comprised of $382 million disclosed by Platinum to the liquidators as of May 31, 2016 and $86.7 million in liabilities later learned by the liquidators during their investigation). (Ex. 114, at ¶ 21-24). In dire language, the

petition warns that Platinum may not be able to pay these liabilities, noting that the fund is "experiencing severe and substantial liquidity problems that threaten to result in devaluation of [its] assets" and that liquidators are engaged in "emergency 'triage'" to stave off Platinum's collapse. (*Id.* at ¶ 60). The petition details substantial evidence of Platinum's "deteriorating financial conditions", including: (i) an imbalance between liquid and illiquid assets caused by the concentration of Platinum's assets in illiquid investments; (ii) delays in audited financial statements being released caused by, among other things, "the esoteric nature" of Platinum's investment assets and the ongoing U.S. government investigations; (iii) delayed monetization events which have in turn delayed rebalancing Platinum's "liquidity position"; (iv) "[a] large amount" of unpaid investor redemption requests; and (v)"[t]he necessary borrowing of funds" by Platinum to fund some of its investments. (*Id.* at ¶ 34).

110. Moreover, the petition raises the grave possibility for Platinum's creditors and investors that there may be significantly less money in Platinum than previously thought for two reasons: (1) Platinum's assets may be overvalued and (2) some of Platinum's major holdings may face "serious asset devaluation." First, the petition flags the ongoing DOJ and SEC investigation into allegations that Platinum overvalued its assets, (*id.* at ¶ 61) which includes oil and gas fields in California that Platinum previously counted as its most valuable assets. (Ex. 115). Second, the petition also warns that Platinum lacks sufficient liquidity to support its investment in Northstar Offshore Group, another substantial Platinum holding that allegedly accounts for 22 percent of Platinum's assets. (Ex. 114, at ¶ 67). Northstar's creditors are currently attempting to force the company into an involuntary bankruptcy in the Southern District of Texas. (*Id.* at ¶ 68). Given that "a Northstar Bankruptcy would likely result in both a

significant devaluation of [Platinum's] assets and may result in a significant credit claim against [Platinum]," the liquidators are trying to arrange financing for Northstar. (*Id.* at ¶¶ 69-70).

111. All of this translates to further drainage of the shrinking pool of funds available to satisfy Platinum's investors and creditors, including the Trustee. Unsurprisingly, given the grave symptoms and uncertain prognosis of Platinum's continuing viability, the Wall Street Journal has recently reported that Platinum plans to pay back a mere $80 million to its investors, less than 10% of what it owes. (Ex. 116).

f. Platinum's various legal and financial scandals has investors scrambling to shed Platinum assets and plaintiffs rushing to file lawsuits, further exacerbating Platinum's woes

112. That Platinum is now viewed as a contagion of disgrace in the finance industry is further evidenced by investors' moves to immediately disassociate themselves from Platinum. In September 2016, the press reported that a Pennsylvania health insurance company was working to shed many of its Platinum assets after Beechwood Re invested tens of millions of the insurer's dollars with Platinum without disclosing its ties to Platinum. (Ex. 74). Also in September 2016, two subsidiaries of an Indiana insurer filed suit in the Southern District of New York against current and former executives of Beechwood Re, including David Levy, alleging that the executives conspired with Platinum to defraud the plaintiffs out of reinsurance trust fund assets and to use those assets to enrich Platinum. (Ex. 17, at ¶ 5). The plaintiffs in that lawsuit describe the very same concerns that the Trustee in this case has expressed about Platinum, stating of their PPCOMF investment:

> Given that [PPCOMF] is in liquidation and has suspended redemptions, that the FBI has raided Platinum's offices, that Platinum is under federal investigation and that one of Platinum's founders is now under indictment for bribing a union official to invest union funds in Platinum, the Trusts' may suffer a considerable loss in this Platinum-related investment.

(*Id.* at ¶125(j)).

113. Finally, adding further pressure on Platinum, at least four separate securities class-action firms are actively soliciting investor-plaintiffs for suits against Platinum. (Ex. 117).

g. The Trustee is virtually certain to suffer an imminent and irreparable injury if the fraudulently conveyed Renaissance sale proceeds are not frozen before they can be dissipated

114. Considering the clear evidence of impending financial catastrophe for Platinum, imminent and irreparable harm to the Trustee is virtually certain absent equitable relief. Defendants' fraudulent conveyance of the Renaissance Sale proceeds caused the Debtor to lose nearly $100 million, further weakening the Debtor's financial condition. Platinum's flagship fund appears to be circling the drain, unable to meet its substantial debt obligations, faced with multiple civil lawsuits, and under criminal investigation. All of this poses a real and immediate risk that the fraudulently transferred funds will dissipate as Platinum begins to pay back litigants, creditors, and investors. If Defendants are permitted to close their hedge funds and further disburse Debtor's money among these various parties, then the Trustee will lose the ability to efficiently recover these sale proceeds from four Defendants for the benefit of the bankruptcy estate. Rather than pursue litigation just against these four Defendants, the Trustee will face the prospect of a much more complicated case in which the Trustee will be forced to chase these dissipated assets by prosecuting a "multiplicity of actions" against numerous hedge fund clients located in several different jurisdictions. All of this will exponentially increase costs to the bankruptcy estate, resulting in a significant reduction in the net amount of any recovery. The fact that the Trustee will face a multiplicity of actions if injunctive relief is not granted is sufficient to establish irreparable harm. *Janvey*, 647 F.3d at 600 (citing *Lee*, 292 U.S. at 421)). An injunction will maintain the status quo and protect the damages remedy.

115. Finally, if injunctive relief is not granted this case could set a dangerous precedent in other cases involving fraudulent conveyances by hedge funds. A hedge fund engaged in

fraudulent practices could be incentivized to enact a scheme and then wait until it is on the cusp of being held accountable for its actions before closing the fund and disbursing fraudulently acquired money among the fund's many clients, frustrating a debtor or bankruptcy trustee's efforts to recover money for the bankruptcy estate.

3. The Injunction will not cause harm to the Defendants

116. Defendants will not suffer harm if a temporary restraining order and subsequent preliminary injunction is entered freezing their assets up to the amounts that were conveyed to them or for their benefit and prohibiting them from closing their funds and disbursing fund assets to fund clients. *See Kalsai Eng'g, Inc. v. Davidson*, 2014 WL 12540550 at *2 (S.D. Tex. Sept 2, 2014) (holding that asset freeze was needed following fraudulent transfer; "no other remedy will fully and adequately preserve [plaintiff's] property that is the subject of this dispute"). Such an injunction would not impact Defendants because the money in the funds would remain untouched by any party, and the injunction would only delay the ultimate disposition of the money. *See HPC US Fund 1, L.P. v. Wood*, 2013 WL 12092104, at *2 (S.D. Fla. Aug. 23, 2013) ("Where a Plaintiff seeks to enjoin the transfer of property fraudulently conveyed, and in contrast a Defendant would simply be stripped of the ability to enjoy the fruits of its fraudulent activities, the balance of equities falls in favor of the Plaintiff.").

117. Even if Platinum alleged that it would suffer some harm by having the money in PPVAF and PPCOMF frozen, the interests of the Trustee in freezing and possibly recovering funds that Platinum fraudulently took outweigh the interests of Platinum. *Janvey*, 647 F.3d at 601 (finding that the district court properly weighed the interests of the defendants against those of the receiver and that it was appropriate for the court to look to the "broader ramifications of any potential recovery by the [r]eceiver").

4. The Injunction will not disserve public interest

118. This element requires a balancing of public interest with other competing social interests. As set forth above, the policies underlying an orderly and effective process by which a debtor or trustee can efficiently pursue litigation to recover a fraudulent conveyance against a single defendant or handful of defendants in a single case rather than numerous parties in a multiplicity of actions would be well served by issuing a temporary restraining order and a subsequent preliminary injunction, and these interests outweigh any competing concerns in this case. Moreover, to the extent this Court's Order Confirming Third Amended Plan of Liquidation of Black Elk expresses the public interest, the Order and Exhibit A to that Order explicitly provide for the Trustee to pursue all remedies connected with the Renaissance Sale. (Docket Entry No. 1204). An injunction pursuant to and within the parameters of that Order aimed at preventing dissipation of estate assets per se serves the public interest.

VI. RELIEF SOUGHT

119. The Trustee seeks a temporary restraining order from the Court freezing funds in an amount equal to the proceeds of the Renaissance sale transferred from Black Elk's Amegy Bank Account No. 54392906 on August 18–21 to or for the benefit of Platinum. The Trustee requests an order that Defendants Platinum, its officers, agents, servants, employees, and attorneys and all persons acting in concert with them be restrained from transferring from their bank or other depository accounts sums as follows:

a. PPVA Black Elk (Equity) LLC is prohibited from transferring in any form out of its accounts and required to preserve in a separate account the sum of $32,563,819.73, which is equal to the amounts transferred to it from Amegy Bank on August 18, 2014 pursuant to Wire No. 13070033426;

b. Platinum Partners Value Arbitrage Fund LP is prohibited from transferring in any form out of its accounts and required to preserve in a separate account the sum of $15,332,672.97, which is equal to the amounts transferred to it from Amegy Bank on August 18, 2014 pursuant to Wire No. 1307003428;

c. In addition to the amounts that PPVA Black Elk (Equity) LLC and Platinum Partners Value Arbitrage Fund LP received directly, each entity is also prohibited, on a joint and several basis, from transferring in any form out of their accounts and required to preserve in a separate account the sum of $20,462,777.78, which is equal to the amounts transferred on their behalf from Amegy Bank on August 18, 2014 pursuant to Wire No. 13070033422;

d. Platinum Partners Credit Opportunity Master Fund LP is prohibited from transferring in any form out of its accounts and required to preserve in a separate account the sum of $24,600,584.31, which is equal to the amounts transferred to it from Amegy Bank on August 20, 2014 pursuant to Wire No. 1306102280; and

e. Platinum Partners Liquid Opportunity Master Fund LP is prohibited from transferring in any form out of its accounts and required to preserve in a separate account the sum of $5,000,000, which is equal to the amounts transferred to it on August 21, 2014 from Amegy Bank pursuant to Wire No. 1306101216.

VII. REQUEST FOR A HEARING

120. The Trustee asks the Court to set the request for a temporary restraining order for hearing at the earliest possible time. Absent a rapid hearing, the risk increases daily that Platinum will through legal and non-legal maneuvers will thwart recovery by the Trustee and the Black Elk creditors.

VIII. CONCLUSION

121. For these reasons, the Trustee asks the Court to issue a temporary restraining order preventing each of the Defendants from liquidating a portion of their assets equivalent to the amount fraudulently transferred to them or for their benefit or otherwise disposing of any assets.

DATED: October 26, 2016.

Respectfully submitted,

By: */s/ Craig Smyser*

SMYSER KAPLAN & VESELKA, L.L.P.
Craig Smyser
Attorney-in-Charge
Texas Bar No. 18777575
Fed. Bar No. 848
csmyser@skv.com
700 Louisiana, Suite 2300
Houston, Texas 77002
713-221-2300
713-221-2320 (fax)

Of Counsel:

SMYSER KAPLAN & VESELKA, L.L.P.
Jeff Potts
Texas Bar No. 00784781
Fed. Bar No. 16504
Justin Waggoner
Texas Bar No. 24003122
Fed. Bar No. 23098
700 Louisiana, Suite 2300
Houston, Texas 77002
713-221-2300
713-221-2320 (fax)
jpotts@skv.com
jwaggoner@skv.com

OKIN ADAMS LLP
Matthew Okin
Texas Bar No. 00784695
Fed. Bar No. 15204
David Curry, Jr.
Texas Bar No. 24065107
Fed. Bar No. 975482
1113 Vine St., Suite 201
Houston, Texas 77002
713-228-4100
888-865-2118
mokin@okinadams.com
dcurry@okinadams.com

ATTORNEYS FOR TRUSTEE

EXHIBIT D

ENTERED
10/26/2016

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
BLACK ELK ENERGY OFFSHORE	§	**CASE NO: 15-34287**
OPERATIONS, LLC	§	
Debtor(s)	§	
	§	**CHAPTER 11**
	§	
RICHARD SCHMIDT	§	
Plaintiff(s)	§	
	§	
VS.	§	**ADVERSARY NO. 16-3237**
	§	
PLATINUM PARTNERS VALUE	§	
ARBITRAGE FUND LP, *et al*	§	
Defendant(s)	§	

TEMPORARY RESTRAINING ORDER

Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, it is ordered that Platinum Partners Value Arbitrage Fund LP, Platinum Partners Credit Opportunity Master Fund LP, Platinum Partners Liquid Opportunity Master Fund, LP, and PPVA Black Elk (Equity) LLC, are enjoined as follows:

1. PPVA Black Elk (Equity) LLC, its officers, agents, servants, employees and attorneys, are barred from transferring, spending or otherwise reducing in any manner any funds from its accounts at Amegy Bank.

2. The immediately preceding paragraph does not prohibit PPVA Black Elk (Equity) LLC from making any transfer if, following such transfer, the unencumbered cash balances held by PPVA Black Elk (Equity) LLC at Amegy Bank exceed $53,026,597.51.

3. Platinum Partners Value Arbitrage Fund LP, its officers, agents, servants, employees and attorneys are barred from transferring, spending or otherwise reducing in any manner any funds from its accounts at Amegy Bank.

4. The immediately preceding paragraph does not prohibit Platinum Partners Value Arbitrage Fund LP from making any transfer if, following such transfer, the unencumbered cash balances held by Platinum Partners Value Arbitrage Fund, L.P. at Amegy Bank exceed $35,795,450.75.

5. In addition to the freezes implemented by paragraphs 1-4, PPVA Black Elk (Equity) LLC, its officers, agents, servants, employees and attorneys, are barred

from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by PPVA Black Elk (Equity) LLC is less than $53,026,597.51.

6. In addition to the freezes implemented by paragraphs 1-4, Platinum Partners Value Arbitrage Fund, L.P., its officers, agents, servants, employees and attorneys, are barred from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by Platinum Partners Value Arbitrage Fund, L.P. is less than $35,795,450.75.

7. Platinum Partners Credit Opportunity Master Fund LP, its officers, agents, servants, employees and attorneys, are barred from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by Platinum Partners Credit Opportunity Master Fund LP is less than $24,600,584.31.

8. Platinum Partners Liquid Opportunity Master Fund LP, its officers, agents, servants, employees and attorneys, are barred from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by Platinum Partners Liquid Opportunity Master Fund LP is less than $5,000,000.00.

In issuing this temporary restraining order, the Court has considered the following factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) that the injunction will not undermine the public interest. *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006).

The principal issue in this case is whether the various enjoined parties engaged in an illegal arrangement when the entities received the proceeds of the sale of assets by Black Elk Energy Offshore Operations, LLC to Renaissance in a transaction that was designed to hinder, delay and defraud Black Elk and its creditors. Specifically, the documents submitted by Trustee Schmidt with his application (supported by the declaration of Mr. Craig Smyser), demonstrate that the distribution of the funds from the Renaissance transaction were illegally siphoned off to allow various Platinum entities to be paid preferentially. The documents reflect a scheme to illegally control the vote by the bondholders, resulting in an artificial and impermissible vote to authorize the transaction. The documents demonstrate that the voting was manipulated through Beechwood Bermuda International Limited LLC and affiliated Beechwood entities. These activities were undertaken with the cooperation and participation of employees and officers of Black Elk. It appears that Beechwood was secretly controlled by Platinum, and that Platinum utilized the Beechwood entity to arrange for a sham vote to authorize the Renaissance transactions.

The allegations in the application for a temporary restraining order reflect a pattern of fraud and abuse by Platinum. The Court is concerned that—if a hearing is scheduled—the assets will be further dissipated before a hearing can be conducted. Nevertheless, the Court recognizes that the issuance of this Temporary Restraining Order is a major event that could cause significant financial distress to Platinum. In order to allow Platinum to obtain immediate relief from this Order, the Court will conduct an emergency hearing at 9:30 a.m. on October 27, 2016. Although Fed. R. Civ. P. 65(b), as made applicable by Fed. R. Bankr. P. 7065 ordinarily would preclude the issuance of a restraining order without notice, the Court finds that 11 U.S.C. § 105 authorizes this extraordinary relief.

1. With respect to the probability of success on the merits, there is a reasonable probability of success. Based on the allegations in the application, as supported by the documents attached to the Smyser declaration, it appears that the Trustee has a reasonable probability of succeeding in recovering the funds. The test established by the Fifth Circuit is not a certainty of success; rather the test is a "reasonable probability." Under the circumstances, the Court finds a reasonable probability of success on the merits of the Trustee's complaint.

2. With respect to immediate, irreparable injury, the Court finds that the Black Elk Litigation Trust may never recover the funds if this order is not issued. Platinum is an international finance entity. One of its affiliates is already involved in an offshore bankruptcy case. If the funds are not frozen, and based on the alleged illegal financial maneuverings demonstrated by the documents attached to the application, the Court finds that the funds are likely to leave the United States and this Court's practical ability to control them. This would result in a total loss to the Plaintiff and constitutes irreparable injury.

3. With respect to the comparative injuries to the Plaintiff and the Defendant, the Court finds that there is a substantial probability of injury to the Plaintiff (if relief is not granted) and to the Defendants (if relief is granted). To minimize any adverse consequences, the Court will conduct an emergency hearing to determine if this order should be modified. The Court finds that this factor is in equilibrium.

4. With respect to the public interest, the Court finds that the public interest favors the recovery of funds into a bankruptcy trust if the funds were achieved through fraud. Because there is a reasonable probability that fraud has occurred, the issuance of this order is in the public interest.

5. In accordance with Bankruptcy Rule 7065, the Plaintiff must post a cash bond of $1,000.00, in cash or bond, with the Clerk of the Court. If the Clerk's office is closed, the funds may be deposited into Mr. Smyser's law firm's IOLTA account and will serve as a bond. Release of the funds from the IOLTA account will be subject to the sole control of this Court. This Order is effective upon the posting or deposit of the $1,000.00. Although this initial bond is minimal, the Court finds the bond to be reasonable in light of the fact that (i) the funds are being frozen, but not transferred. Accordingly, they will be preserved; and (ii) the Court is conducting a hearing after the expiration of less than 3 business hours to determine whether to leave the freeze in place or to reset the bond amount.

6. This temporary restraining order shall expire at 5:00 p.m. on November 3, 2016. A hearing on whether to issue a preliminary injunction will commence at 3:00 p.m. on November 2, 2016.

7. The Court will consider motions to amend or vacate this order on an emergency basis.

Signed, and immediately effective, at 3:53 p.m. on October 26, 2016.

SIGNED **October 26, 2016.**

Marvin Isgur
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT E

From: Lindstrom, Chris <Chris.Lindstrom@cooperscully.com>
Sent: Tuesday, December 20, 2016 2:15 PM
To: Smyser, Craig (csmyser@skv.com); mokin@okinadams.com; jwaggoner@skv.com; Potts, Jeff (jpotts@skv.com); Warren.Gluck@hklaw.com
Cc: Dortch, Micah
Subject: Black Elk v PPCO et al
Attachments: 5-Order to Show Cause.pdf; 6-Order Appointing Receiver.pdf

Craig:

Attached are orders related to the appointment of a receiver for Platinum that we discussed. Dkt. 5 appears to be missing pages, but that is how it is on PACER.

Given the appointment of Mr. Schwartz as Receiver, we will need time to get him up to speed on the answer and any defenses in the case. I am requesting that the Trustee allow an additional 2 weeks for PPCO and PPLO to answer or otherwise respond to the Complaint.

Please let me know if you are opposed or unopposed to moving that date to January 11, 2017.

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ DEC 19 2016 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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.**	**Civil Case No.** **16-cv-** 6848 (KAM)

KAM

[~~PROPOSED~~] ORDER TO SHOW CAUSE, TEMPORARY RESTRAINING ORDER, ORDER APPOINTING RECEIVER, AND GRANTING OTHER RELIEF

On the Application of Plaintiff Securities and Exchange Commission ("Plaintiff Commission") for an Order:

(1) directing defendants Platinum Credit Management, L.P. ("Platinum Credit"), and Mark Nordlicht ("Nordlicht") to show cause why an order should not be entered, pending a final disposition of this action:

(a) appointing a receiver (the "Receiver") over the following "Receivership Entities" owned and/or controlled, directly or indirectly, by Nordlicht: (i) Platinum Credit and the United States-incorporated master and feeder funds it advises, Platinum Partners Credit Opportunities Master Fund LP; Platinum Partners Credit

Opportunity Fund (USA) L.P. ("Receivership Entities"); to (i) preserve the status quo, (ii) ascertain the extent of commingling of funds among the Receivership Entities; (iii) ascertain the true financial condition of the Receivership Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Receivership Entities; (v) prevent the encumbrance or disposal of property or assets of the Receivership Entities; (vi) preserve the books, records and documents of the Receivership Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix) conduct an orderly wind down including a responsible liquidation of assets and orderly and fair distribution of those assets to investors; and (x) determine whether one or more of the Receivership Entities should undertake bankruptcy filings.

WHEREAS the Court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the "Receivership Assets").

2. Until further Order of this Court, Bart Schwartz is hereby appointed to serve without bond as receiver (the "Receiver") for the receivership estate of the Receivership Entities (the "Receivership Estate").

I. General Powers and Duties of Receiver

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver

(d) providing that the parties may take expedited discovery in preparation for a preliminary injunction hearing on this Order to Show Cause; and

(e) prohibiting Platinum Credit from destroying, altering or concealing documents.

The Court has considered (1) the Complaint filed by Plaintiff Commission on December 19, 2016; (2) the Document Declaration of Jess A. Velona, Esq., executed on December 19, 2016 and the exhibits thereto; (4) the Declaration of Neal Jacobson, Esq. pursuant to Local Rule 6.1(d), executed on December 19, 2016; and (7) the memorandum of law in support of Plaintiff Commission's emergency application for an order to show cause, temporary restraining order, preliminary injunction, appointment of a receiver, and other relief, dated December 19, 2016.

Based upon the foregoing documents, the Court finds that a proper showing, as required by Section 209(d) of the Advisers Act, Section 20(b) of the Securities Act, and Section 20(d) of the Exchange Act has been made for the relief granted herein, for the following reasons:

1. It appears from the evidence presented that Platinum Credit has violated and, unless temporarily restrained, will continue to violate, Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; Section 17(a) of the Securities Act; Section 10(b) of Exchange Act and Rule 10b-5 thereunder, as charged in the Complaint.

2. It appears that the appointment of a Receiver over the Receivership Entities is necessary to: (i) preserve the status quo, (ii) ascertain the extent of commingling of funds among the Receivership Entities; (iii) ascertain the true financial condition of the Receivership Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Receivership Entities; (v) prevent the encumbrance or disposal of property or assets of the Receivership Entities; (vi) preserve the books, records and documents of the Receivership Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix)

C. To manage, control, operate and maintain the Receivership Entities and hold in the Receiver's possession, custody and control all Receivership Property, pending further Order of this Court;

D. To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the Receiver's duties as Receiver;

E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, managers, managing members, and general and limited partners, and agents of the Receivership Entities;

F. To engage and employ persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval;

G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure and Court orders;

I. To investigate transactions by and among Receivership Entities, defendants, and any other persons and entities.

J. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver's duties

Federal Rules of Civil Procedure and Section 209(d) of the Advisers Act, Section 20(b) of the Securities Act, and Section 20(d) of the Exchange Act preliminarily enjoining Platinum Credit from violating and aiding and abetting violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; Section 17(a) of the Securities Act [15 U.S.C. § 77q]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

II.

IT IS FURTHER ORDERED that Platinum Credit and Nordlicht show cause at that time why this Court should not also enter an Order appointing or continuing the appointment of a Receiver over the Receivership Entities, to (i) preserve the status quo; (ii) ascertain the extent of commingling of funds among the Receivership Entities; (iii) ascertain the true financial condition of the Receivership Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Receivership Entities; (v) prevent the encumbrance or disposal of property or assets of the Receivership Entities and the investors; (vi) preserve the books, records and documents of the Receivership Entities; (vii) be available to respond to investor inquiries; (viii) protect the assets of the Receivership Entities; and (ix) determine whether one or more of the Receivership Entities should undertake bankruptcy filings.

III.

IT IS FURTHER ORDERED that Platinum Credit show cause at that time why this Court should not also enter an Order enjoining and restraining it, and any person or entity acting at its direction or on its behalf, or any other person, from destroying, altering, concealing or otherwise interfering with the access of Plaintiff Commission and the Receiver to any and all documents, books and records, that are in the possession, custody or control of Platinum Credit,

employees, and accountants, shall cooperate with the Receiver and produce all documents as may be required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities.

III. Access to Books, Records and Accounts

11. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

12. The Receivership Entities, as well as their past and/or present officers, directors, agents, managers, managing members, general and limited partners, attorneys, employees, and accountants, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, the Receiver's agents and/or employees.

13. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities

IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Platinum Credit's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Platinum Credit or with anyone described in (a).

V.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, Platinum Credit is temporarily restrained from violating, directly or indirectly Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Platinum Credit's officers, agents, servants, employees, and attorneys; and (b) other persons in active

exclusive control of the keys and all other means of access to the real property. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys or other means of access made, nor shall they have keys or other means of access in their possession during the term of the receivership except as authorized by the Receiver.

17. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

V. Notice to Third Parties

18. The Receiver shall promptly give notice of the Receiver's appointment to all known persons and entities including past and present officers, directors, managers, managing members, general and limited partners, agents, attorneys, accountants, and employees of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

19. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entities shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entities had received such payment.

20. In furtherance of the Receiver's responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial

acting at its direction or on its behalf, and any other third party, be and hereby are (1) enjoined and restrained from destroying, altering, concealing or otherwise interfering with the access of Plaintiff Commission and the Receiver to any and all documents, books, and records that are in the possession, custody or control of Platinum Credit, and each of its respective officers, agents, employees, servants, accountants, financial or brokerage institutions, or attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books and records referring, reflecting or relating to Platinum Credit's and the Receivership Entities' finances or business operations, or the offer, purchase or sale of securities and the use of proceeds therefrom; and (2) ordered to provide all reasonable cooperation to the Receiver in carrying out his duties set forth herein.

VIII.

IT IS FURTHER ORDERED that Bart Schwartz, pending further order of this Court, be and hereby is appointed to act as Receiver over the Receivership Entities subject to all of the terms and conditions set forth in the Order Appointing Receiver.

IX.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the defendants or Receivership Entities, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the taking control, possession, or management of the assets, including, but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this Order and the Order Appointing Receiver except that, nothing herein shall apply to or have any effect upon Cause No: FSD 118/2016 (NAS) and Cause No: FSD 131 of 2016 (AJJ) pending before the

23. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of the Receiver's duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entities, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate.

opposing papers in response to the ~~Order to Show Cause~~ Preliminary Injunction above no later than December 30

2016, at 5 a.m./p.m. Service shall be made by delivering the papers,

by hand delivery, facsimile transmission to (212) 336-1324, email at SallahD@sec.gov, or

overnight courier service on the Commission's counsel, Danielle Sallah, Esq., Securities and

Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281, or

such other place as counsel for the Plaintiff Commission may direct in writing. The Plaintiff

Commission shall have until January 4, ~~2016~~/2017 at noon a.m./p.m.

to serve, by the most expeditious means available, any reply papers upon Platinum Credit and

Nordlicht, or upon their counsel, if counsel shall have made an appearance in this action.

KAM

XIII.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon Platinum Credit and Nordlicht and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

SO ORDERED:

Dated: Brooklyn, NY
December 19, 2016

s/KAM
United States District Judge

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ DEC 19 2016 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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.**	**Civil Case No.** **16-cv-** 6848 (KAM) (VMS)

~~[PROPOSED]~~ KAM **ORDER APPOINTING RECEIVER**

WHEREAS this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission ("SEC", "Commission" or "Plaintiff") to appoint a receiver in the above-captioned action;

WHEREAS the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of Platinum Credit Management, L.P.; Platinum Partners Credit Opportunities Master Fund LP; Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund LLC; Platinum Partners Credit Opportunity Fund (BL) LLC; Platinum Liquid Opportunity Management (NY) LLC; and Platinum Partners Liquid

Opportunity Fund (USA) L.P. ("Receivership Entities"); to (i) preserve the status quo, (ii) ascertain the extent of commingling of funds among the Receivership Entities; (iii) ascertain the true financial condition of the Receivership Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Receivership Entities; (v) prevent the encumbrance or disposal of property or assets of the Receivership Entities; (vi) preserve the books, records and documents of the Receivership Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix) conduct an orderly wind down including a responsible liquidation of assets and orderly and fair distribution of those assets to investors; and (x) determine whether one or more of the Receivership Entities should undertake bankruptcy filings.

WHEREAS the Court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the "Receivership Assets").

2. Until further Order of this Court, Bart Schwartz is hereby appointed to serve without bond as receiver (the "Receiver") for the receivership estate of the Receivership Entities (the "Receivership Estate").

I. General Powers and Duties of Receiver

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver

at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

4. All officers, directors, managing members, general and limited partners of the Receivership Entities are hereby dismissed from any and all positions of management of the Receivership Entities, and the powers of any officers, directors, managing members, general and limited partners of the Receivership Entities, are hereby subject to the authority and discretion of the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of the Receivership Entities' claims.

5. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities except as may be authorized or delegated by the Receiver.

6. Subject to the specific provisions in this Order, the Receiver shall have the following general powers and duties:

A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property");

B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;

C. To manage, control, operate and maintain the Receivership Entities and hold in the Receiver's possession, custody and control all Receivership Property, pending further Order of this Court;

D. To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the Receiver's duties as Receiver;

E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, managers, managing members, and general and limited partners, and agents of the Receivership Entities;

F. To engage and employ persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval;

G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure and Court orders;

I. To investigate transactions by and among Receivership Entities, defendants, and any other persons and entities.

J. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver's duties

as Receiver;

K. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate; and,

L. To take such other action as may be approved by this Court.

II. Access to Information

7. The Receivership Entities and the Receivership Entities' and the past and/or present officers, directors, managers, managing members, general and limited partners, agents, attorneys, accountants and employees of the Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

8. Within five (5) days of the entry of this Order, the Receivership Entities shall serve upon the Receiver and the Commission a sworn statement, listing: (a) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entities; and, (c) the names, addresses and amounts of investments of all known investors of the Receivership Entities.

9. Within five (5) days of the entry of this Order, Receivership Entities shall provide to the Receiver and the Commission copies of Receivership Entities' federal income tax returns with all relevant and necessary underlying documentation.

10. The Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, managers, managing members, general and limited partners, attorneys,

employees, and accountants, shall cooperate with the Receiver and produce all documents as may be required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities.

III. Access to Books, Records and Accounts

11. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

12. The Receivership Entities, as well as their past and/or present officers, directors, agents, managers, managing members, general and limited partners, attorneys, employees, and accountants, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, the Receiver's agents and/or employees.

13. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities

except upon instructions from the Receiver;

B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court; and

C. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

IV. Access to Real and Personal Property

14. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

15. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

16. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have

exclusive control of the keys and all other means of access to the real property. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys or other means of access made, nor shall they have keys or other means of access in their possession during the term of the receivership except as authorized by the Receiver.

17. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

V. Notice to Third Parties

18. The Receiver shall promptly give notice of the Receiver's appointment to all known persons and entities including past and present officers, directors, managers, managing members, general and limited partners, agents, attorneys, accountants, and employees of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

19. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entities shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entities had received such payment.

20. In furtherance of the Receiver's responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial

condition of the Receivership Estate. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

21. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individuals, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

22. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage, trash removal, and any other services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VI. Injunction Against Interference with Receiver

23. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of the Receiver's duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entities, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate.

and (v) all pending bankruptcy processes in which the Receivership Entities are involved

24. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VII. Stay of Litigation

25. As set forth in detail below, the following proceedings, ***excluding*** (i) the instant proceeding, (ii) all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, and for the avoidance of doubt, (iii) Cause No: FSD 118/2016 (NAS) and Cause No: FSD 131 of 2016 (AJJ) pending before the Grand Court of the Cayman Islands, ~~and~~ (iv) the bankruptcy cases *In re Platinum Partners Value Arbitrage Fund L.P.*, 16-12925 (Bankr. S.D.N.Y.) and *In re Platinum Partners Value Arbitrage Fund International Ltd.*, 16-12934 (Bankr. S.D.N.Y.), are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities; or, (d) any of the Receivership Entities' past or present officers, directors, managers, managing members, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

26. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

27. All Ancillary Proceedings are stayed in their entirety, and all courts having any

jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

VIII. Managing Assets

28. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

29. Subject to the specific provisions of this order, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

30. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate.

31. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating

with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

32. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations.

IX. Investigate and Prosecute Claims

33. Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in the Receiver's discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

34. Subject to the Receiver's obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate, the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

35. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities.

X. Bankruptcy Filing

36. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for any or all of the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 3 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition. *See*, *In re Bayou Group, LLC,* 564 F.3d 541, 548-49 (2nd Cir. 2009).

37. The provisions of Section VII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

XI. Liability of Receiver

38. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, the Receiver's Retained Personnel (as that term is defined below), and the Receivership Estate.

39. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with the Receiver's fiduciary obligations in this matter.

40. The Receiver and the Receiver's agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or

Retained Personnel.

41. The Receiver and the Receiver's advisers and agents shall be indemnified by each of the Receivership Entities except for gross negligence, willful misconduct, fraud, or breach of fiduciary duty determined by a final order no longer subject to appeal, for all judgments, costs, reasonable expenses including legal fees (which shall be paid under the indemnity after court approval as they arise), arising from or related to any and all claims of whatsoever type brought against any of them in their capacities as Receiver or advisers or agents of the Receiver; provided, however, that nothing herein shall limit the immunity of the Receiver and the Receiver's advisers and agents allowed by law or deprive the Receiver or the Receiver's advisers and agents of indemnity for any act or omission for which they have immunity.

42. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

43. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XII. Recommendations and Reports

44. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation and distribution of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

45. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the

report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

46. The Quarterly Status Report shall contain the following:

A. A summary of the operations of the Receiver;

B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;

C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;

D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;

E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

F. A summary of the status of the Receiver's investigation of the transactions by and among the Receivership Entities;

G. A list of all known investors and creditors and the amount of their investments and claims, as applicable, redacted to exclude personally identifiable information;

H. The status of investor and creditor claims proceedings, after such proceedings

have been commenced; and,

I. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

47. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

XIII. Fees, Expenses and Accountings

48. Subject to the specific provisions of this Order, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

49. Subject to the specific provisions of this Order, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist the Receiver in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

50. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

51. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement

from the Receivership Estate (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

52. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

53. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court in the SEC staff's discretion or such other percentage holdback as the Court may order. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

54. Each Quarterly Fee Application shall:

A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and

B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

55. At the close of the Receivership, the Receiver shall submit a Final Accounting, in

a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

SO ORDERED.

Dated: Brooklyn, NY
December 19, 2016

s/KAM
United States District Judge

EXHIBIT F

From: Smyser, Craig [mailto:csmyser@skv.com]
Sent: Friday, December 16, 2016 3:32 PM
To: Lindstrom, Chris; Dortch, Micah
Cc: mokin@okinadams.com; Waggoner, Justin; Potts, Jeff
Subject: Black Elk Litigation Trustee v. PPCO/PPLO -- proposed agreement -- FRE 408 -- confidential

Chris and Micah,

As the result of several hours of negotiation yesterday, here are the broad outlines of a proposal of security to substitute for the cash retention obligations of $29,600,584.31 the Court imposed on PPCO/PPLO in its Temporary Restraining Order of October 26, 2016. The Trustee insists that what follows is a general outline of a potential transaction – whether as a settlement or substitute security arrangement – and is subject in its entirety to the parties' executions of mutually acceptable deal documentation, which the parties remain free to accept or reject in their sole discretion.

1. The parties will establish an escrow account to retain the cash and life policies under the terms described below.
2. PPCO/PPLO will deposit $3,000,000 cash in the escrow account by December 31, 2016.
3. PPCO/PPLO will deposit in the escrow 10% of the cash generated in any liquidity event occurring after December 31, 2016 by either entity, however that cash is generated.
4. PPCO/PPLO will provide the Trustee an exhaustive list of all life policies in which PPCO/PPLO have an interest. The policies so identified will be placed in the escrow account subject to the terms of this agreement.
5. PPCO/PPLO will provide the Trustee a secured interest in all the listed policies. When any of those policies pays out, one hundred percent of the funds so paid out will be deposited in the escrow account until the total amount on deposit in the escrow equals $29,600,584.31.
6. PPCO/PPLO will provide at the end of each month a verified statement, in income statement form, of all revenue / liquidity events and expenses for that month by reasonably determinable category, as well as expected revenue / liquidity events for the following 3 months.

7. If by December 31, 2018, the amount on deposit in the escrow does not equal $29,600,584.31 PPCO/PPLO must sell in an arm's length transaction by March 31, 2019 any amount of life insurance policies still remaining for their cash value and then deposit the proceeds in the escrow account until the total amount on deposit equals $29,600,584.31.
8. If any insurer files a legal challenge in any forum to paying its obligation under any of the listed life policies, then PPCO/PPLO must sell in an arm's length transaction within three months of the filing of that legal challenge any amount of life insurance policies for their cash value and then deposit the proceeds in the escrow account until the total amount on deposit in the escrow equals $29,600,584.31.
9. PPCO/PPLO will pay timely all premiums due on the insurance policies, and such premium payments shall not be paid from the escrow account or in any way diminish PPCO/PPLO's obligation to fund the escrow account specified herein.
10. In the event PPCO/PPLO fails to timely pay the premiums on any of the life policies, PPCO/PPLO must sell in an arm's length transaction within three months of the failure to pay the premiums any amount of life insurance policies for their cash value and then deposit the proceeds in the escrow account until the total amount on deposit equals $29,600,584.31.
11. PPCO/PPLO may satisfy at any time without any prepayment or other penalty any of its obligations to provide security by deposit in the escrow account of funds sufficient to bring the total amount of funds on deposit in the escrow to $29,600,584.31.
12. In the event PPCO/PPLO loses ownership or control of the life policies, PPCO/PPLO will deposit 40% of the cash generated by either entity, however that cash is generated, by reason of any liquidity event occurring after PPCO/PPLO loses such ownership or control of the life polices until the amount on deposit in the escrow account equals $29,600,584.31.

As we worked through the elements of this substitute security agreement, it became apparent that this arrangement could form

the basis for a settlement among the parties, since a conclusion of the matter would benefit both sides in different ways.

Regardless, after review of these terms, please let me know if you have any comments or suggestions.

Thanks,

Craig

Craig Smyser
Smyser Kaplan & Veselka, L.L.P.
700 Louisiana Street | Suite 2300
Houston, Texas 77002
O: 713.221.2330 | C: 713.503.5376

website | bio | linkedin | vCard | map | email

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EXHIBIT G

From: Smyser, Craig [mailto:csmyser@skv.com]
Sent: Saturday, December 31, 2016 1:11 PM
To: Lindstrom, Chris
Cc: mokin@okinadams.com; Dortch, Micah; Barenholtz, Celia Goldwag; Levine, Alan; Waggoner, Justin; Potts, Jeff
Subject: Re: Updated DEC '16 Expenses - Confidential RE 408

If anyone else from my office attends, I'll have them on speaker phone.

Thanks,

Craig

Sent from my iPhone

> On Dec 31, 2016, at 9:53 AM, Lindstrom, Chris <Chris.Lindstrom@cooperscully.com> wrote:
>
> I'll send out dial in for 200 central. Let me know if I need to include anyone other than you & Matt on that end.
>
>> On Dec 30, 2016, at 6:33 PM, Smyser, Craig <csmyser@skv.com> wrote:
>>
>> Chris,
>>
>> Yes, I am available Wednesday afternoon.
>>
>> Regards,
>>
>> Craig
>>
>>
>> Craig Smyser
>> Smyser Kaplan & Veselka, L.L.P.
>> 700 Louisiana Street | Suite 2300
>> Houston, Texas 77002
>> O: 713.221.2330 | C: 713.503.5376
>>
>>
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>>
>>
>>
>
> Chris Lindstrom
>
> Cooper & Scully, P.C.

> 815 Walker St. #1040
> Houston, TX 77002
> 713.236.6805
> Phone: 713.236.6800
> Fax: 713.236.6880
> Email: Chris.Lindstrom@cooperscully.com www.cooperscully.com
>
>
>
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>
> Dallas - 214.712.9500   Houston - 713.236.6800   San Francisco - 415.956.9700
>
> -----Original Message-----
>> From: Lindstrom, Chris [mailto:Chris.Lindstrom@cooperscully.com]
>> Sent: Friday, December 30, 2016 6:32 PM
>> To: Smyser, Craig
>> Cc: mokin@okinadams.com; Dortch, Micah; cbarenholtz@cooley.com;
>> alevine@cooley.com; Waggoner, Justin; Potts, Jeff
>> Subject: Re: Updated DEC '16 Expenses - Confidential RE 408
>>
>> Please let us know if you are available Wednesday afternoon
>>
>>
>>
>>
>> On Dec 29, 2016, at 5:01 PM, Lindstrom, Chris
<Chris.Lindstrom@cooperscully.com<mailto:Chris.Lindstrom@cooperscully.com>> wrote:
>>
>> How does Wednesday afternoon work for your schedule?
>>
>> On Dec 29, 2016, at 2:33 PM, Smyser, Craig <csmyser@skv.com<mailto:csmyser@skv.com>> wrote:
>>
>> Chris,
>>
>> At this point, the Trustee does not feel comfortable acting on and will not act on this or other requests without first conferring with the Receiver(s) regarding the path and their role going forward. Since the Receiver's counsel are included on this email, I would ask them to see if there is a time for which I could schedule an introductory conference with Mr. Schwartz and/or Mr. Burnstein.
>>
>> Regards,
>>
>> Craig
>>

>> From: Lindstrom, Chris [mailto:Chris.Lindstrom@cooperscully.com]
>> Sent: Wednesday, December 28, 2016 1:09 PM
>> To: Smyser, Craig; 'David Steinberg'; 'mokin@okinadams.com<mailto:mokin@okinadams.com>'
>> Cc: 'Harvey Werblowsky'; Dortch, Micah;
>> cbarenholtz@cooley.com<mailto:cbarenholtz@cooley.com>;
>> alevine@cooley.com<mailto:alevine@cooley.com>
>> Subject: RE: Updated DEC '16 Expenses - Confidential RE 408
>>
>> Craig:
>>
>> Here are the documents that you requested on the approved payments. Schedule B shows the exact use of the proceeds.
>>
>> Let us know if there is additional documentation you would like for your file.
>>
>>
>> From: Smyser, Craig [mailto:csmyser@skv.com]
>> Sent: Wednesday, December 21, 2016 4:40 PM
>> To: Lindstrom, Chris; 'David Steinberg'; 'mokin@okinadams.com<mailto:mokin@okinadams.com>'
>> Cc: 'Harvey Werblowsky'; Dortch, Micah
>> Subject: RE: Updated DEC '16 Expenses - Confidential RE 408
>>
>> Chris,
>>
>> Here are the Trustee's questions regarding the requested payments:
>>
>>
>> 1. The Trustee approves payment of the Dec. 30, 2016 life premiums for and
>>
>> 2. With respect to the settlement, the Trustee questions why PPCO is requesting $430,000 -- two payments of $215,000 - for the settlement.
>>
>> 3. With respect to the fees and responding to Mr. Harvey Werwoblowsky's point that the request is "not for fees but is owed for litigation finance," the only backup data reviewed - perhaps other data exists - indicates that more than $1,000,000 is owed to on old invoices that contain a substantial legal fees component. Further, it appears that PPCO - assuming PPCO is the entity making payments to - has been paying a fraction of the past due balance on a monthly basis. PPCO has offered no explanation why PPCO now needs to pay substantial sums to when PPCO has not been doing so in the past. Further to our security discussion, it is hard for the Trustee to understand why PPCO, now under a TRO to freeze assets to protect the Black Elk Trustee's claim, is not devoting any money to security and instead is now proposing to pay large sums on at least one project that it did not pay in a similar manner when PPCO was making business decisions to pay these same past due balances.
>>
>> 4. The Trustee approves payment of $50,000 for the matter, although the backup is scant.
>>

>> 5. With respect to the $230,000 requested under the generic heading: "Additional legal for [redacted] [redacted] [redacted]:" please explain what sum of money is being directed to which matter; what obligation other Platinum entities, if any, have or had to pay any of these sums and, if such an obligation exists, whether the entity(ies) are paying the share of the fees it or they committed to pay; confirm that the request for [redacted] fees is for the lawyer representing PPCO in the bankruptcy; and why PPCO is paying any of the fees for [redacted] which has been represented to be an investment owned by PPVAF.
>>
>> I also note that the Trustee made several approvals on other items, such as [redacted] and [redacted] contingent on PPCO providing final documentation and information regarding the exact use of the proceeds. Again, PPCO may have supplied this information and it was overlooked; if this is the case, lay that mistake at my feet and please either direct me to the information or resupply it.
>>
>> Regards,
>>
>> Craig
>>
>> <image001.jpg><http://www.skv.com/>
>>
>> Craig Smyser
>> Smyser Kaplan & Veselka, L.L.P.
>> 700 Louisiana Street | Suite 2300
>> Houston, Texas 77002
>> O: 713.221.2330 | C: 713.503.5376
>>
>>
>>
>> website<http://www.skv.com/> |
>> bio<http://www.skv.com/attorneys/craig-smyser/> |
>> linkedin<https://www.linkedin.com/company/1543554?trk=tyah> |
>> vCard<http://www.dynasend.com/signatures/vcard/csmyser-at-skv.com.vcf
>> > |
>> map<https://www.google.com/maps/place/700+Louisiana+St/@29.7606119,-9
>> 5.3663039,17z/data=!3m1!4b1!4m2!3m1!1s0x8640bf3a0da0132d:0xc468ff4a25
>> 3e441c?hl=en> | email<mailto:csmyser@skv.com>
>>
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>>
>>
>>
>> From: Lindstrom, Chris [mailto:Chris.Lindstrom@cooperscully.com]
>> Sent: Wednesday, December 21, 2016 1:58 PM
>> To: 'David Steinberg'; Smyser, Craig; 'mokin@okinadams.com<mailto:mokin@okinadams.com>'
>> Cc: 'Harvey Werblowsky'; Dortch, Micah
>> Subject: RE: Updated DEC '16 Expenses - Confidential RE 408
>>

>> Craig:
>>
>> As a follow up, the Receiver (Bart Schwartz) has approved these payments and they are time sensitive. Given people will be very difficult to reach over the next few days, we would appreciate an answer on these today so that we can set the matter for hearing if needed before the end of the year.
>>
>> If there is any additional information that you need, or if there is a specific problem with any item, please let me know.
>>
>> Also, Mr. Schwartz and Dan Burstein, Senior Management Director with Guidepost, would like to set up an introductory call with you to discuss their role moving forward. Please let me know your availability for that call.
>>
>>
>>
>>
>>
>>
>>
>>
>> Chris Lindstrom
>>
>> Cooper & Scully, P.C.
>> 815 Walker St. #1040
>> Houston, TX 77002
>> Direct: 713.236.6805
>> Phone: 713.236.6800
>> Fax: 713.236.6880
>> Email:
>> Chris.Lindstrom@cooperscully.com<mailto:Chris.Lindstrom@cooperscully.
>> com> www.cooperscully.com<http://www.cooperscully.com>
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>> ___________________________________
>> Dallas - 214.712.9500   Houston 713.236.6800   San Francisco 415.956.9700
>> ___________________________________
>> From: Lindstrom, Chris
>> Sent: Wednesday, December 21, 2016 8:00 AM
>> To: 'David Steinberg'; 'Smyser, Craig';
>> mokin@okinadams.com<mailto:mokin@okinadams.com>
>> Cc: Harvey Werblowsky; Dortch, Micah
>> Subject: RE: Updated DEC '16 Expenses - Confidential RE 408
>>
>> Craig:
>>

>> With the holiday approaching, I don't want this to slip through the cracks. Please let us know which of these can be paid (David: let me know if any are left off):
>>
>> [redacted] premium $116,014.32 due 12/30/16
>>
>> [redacted] premium $214,700.83 due 12/30/16
>>
>> [redacted] advance for settlement $215,000.00
>>
>> [redacted] fees $600,000.00
>>
>> [redacted] $50,000.00
>>
>> Fees for [redacted] [redacted] & [redacted] $230,000.00
>>
>> [redacted] Settlement $215,000.00
>>
>>
>>
>> From: David Steinberg [mailto:DSteinberg@platinumlp.com]
>> Sent: Thursday, December 15, 2016 1:15 PM
>> To: 'Smyser, Craig'; Lindstrom, Chris
>> Cc: Harvey Werblowsky; Dortch, Micah
>> Subject: Updated DEC '16 Expenses - Confidential RE 408
>>
>> Attached.
>>
>>
>>
>>
>>
>>
>>
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>

EXHIBIT H

From: Smyser, Craig [mailto:csmyser@skv.com]
Sent: Thursday, December 22, 2016 5:13 PM
To: Harvey Werblowsky <HWerblowsky@platinumlp.com>; Trey Rogers <trogers@platinumlp.com>
Cc: Lindstrom, Chris <Chris.Lindstrom@cooperscully.com>; David Steinberg <DSteinberg@platinumlp.com>; Bart M. Schwartz <BSchwartz@guidepostsolutions.com>
Subject: RE: Acceleration Bay

Chris, Harvey, and David:

I appreciate Trey's response and attachments; however, they do not clear up the issue for the Trustee. A list that says the total for "advances" is $4.55 million but does not describe what the advances are for (the spread sheet fails in that regard as well) is not helpful; instead the requests indicate that PPCO now – having failed to pay attorneys for months (some of the invoices date back to April) -- wants to pay attorneys with money that should be set aside for Black Elk.

At this point, the Trustee's problem is larger than payments on investments in [REDACTED] or on the [REDACTED] settlement. PPCO makes these and other requests to spend money against the backdrop that so far PPCO/PPLO has not set aside ***one penny*** in escrow – has not even offered to set aside any money from any of its multi-million dollar liquidity events – to satisfy the Bankruptcy's Court's TRO or the Black Elk creditors. Now, four of the Platinum individuals connected to the Black Elk scheme are named in an indictment, the centerpiece of which is the Black Elk scheme and the retelling of which in the indictment reads like the Trustee's Complaint. Likewise, another federal court in the Eastern District of New York granted a TRO at the request of the SEC on similar Black Elk allegations. Yet PPCO continues to operate without regard to the months-old Black Elk TRO and without regard to repaying the some $30 mm it stole from Black Elk and its creditors -- other than to request more money to fund investments that will take years to mature – while dithering on the security issue.

The Trustee and his constituents find this approach unacceptable and demand that it be revised to take into account that

PPCO/PPLO are under a court order freezing assets to supply security for an almost-certainly inevitable judgment.

Regards,

Craig

Craig Smyser
Smyser Kaplan & Veselka, L.L.P.
700 Louisiana Street | Suite 2300
Houston, Texas 77002
O: 713.221.2330 | C: 713.503.5376

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From: Harvey Werblowsky [mailto:HWerblowsky@platinumlp.com]
Sent: Thursday, December 22, 2016 11:51 AM
To: Trey Rogers
Cc: Chris Lindstrom; Smyser, Craig; David Steinberg; Bart M. Schwartz
Subject: Re: Acceleration Bay

Ty trey. Hopefully this clears up any confusion and we can get the ok to fund

Sent from my iPad

On Dec 22, 2016, at 12:30 PM, Trey Rogers <trogers@platinumlp.com> wrote:

Dear All,

Please find attached a schedule of Cash flows for [REDACTED], with corresponding amounts for advances that have been funded and the total amount outstanding.

I've also attached an email from [REDACTED] from [REDACTED], summarizing the same information.

Please let me know if you require any additional information to have the funding request approved.

Thank you,

Trey Rogers, CPA | Director, Financial Reporting | Platinum Partners
250 West 55th Street, 14th Floor, New York, NY 10019
tel: (212) 634-5254| mobile: (646) 531-2312 | fax: (212) 582-2424
trogers@platinumlp.com

<AB Model (V2).xlsx>
<mime-attachment>

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EXHIBIT I

From: Lindstrom, Chris [mailto:Chris.Lindstrom@cooperscully.com]
Sent: Friday, December 30, 2016 12:38 PM
To: Smyser, Craig (csmyser@skv.com) <csmyser@skv.com>; mokin@okinadams.com
Cc: Dortch, Micah <Micah.Dortch@cooperscully.com>; Barenholtz, Celia Goldwag <cbarenholtz@cooley.com>; Levine, Alan <alevine@cooley.com>
Subject: PPCO expenditure requests; life premium and [REDACTED] [REDACTED]

Craig:

A life insurance premium in the amount of $23,568.88 for [REDACTED] is due January 4, 2017. A copy of the invoice is attached.

It is my understanding that no other premiums are due until approximately January 14, 2017, so I will send those in a separate email next week.

Also, due on January 2, 2017 is the quarterly interest payment of $130,000 on the [REDACTED] [REDACTED] loan. The Trustee has previously approved an interest payment and principal payment on this loan. You should already have the documentation on this from the loan and forbearance documents previously provided.

The Receiver has reviewed each of these requests and is seeking agreement from the Trustee to make these expenditures.

Please let me know if they payments can be made.

CHRIS LINDSTROM

COOPER & SCULLY, P.C.
815 WALKER ST. #1040
HOUSTON, TX 77002
DIRECT: 713.236.6805
PHONE: 713.236.6800
FAX: 713.236.6880
EMAIL: CHRIS.LINDSTROM@COOPERSCULLY.COM
WWW.COOPERSCULLY.COM

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http://www.cooperscully.com/confidentialitynotice/

MetLife Insurance Company USA
PO Box 321
Warwick RI 02887-0321

Bam Administrative Srvs Llc
1370 Ave Of Americas FL 32
New York NY
10019

December 1, 2016
COLLATERAL ASSIGNEE COPY
Insured: [REDACTED]

Policy: [REDACTED]

Contract Benefit: $1500000.00

We value your business with MetLife and want to ensure that your policy remains in force and continues to provide the valuable protection for your beneficiary that you originally intended.

As stated in your policy, the Death Benefit Guarantee Value must be positive to keep your Death Benefit Guarantee rider in force. Unfortunately, as of December 1, 2016 the Death Benefit Guarantee Value was less than zero. If $23568.66 is not received within 34 days from the date of this letter, the rider will terminate. This payment will continue your Death Benefit Guarantee rider until your next planned premium due date.

If the money required to keep your rider in force is not received within 34 days from the date of this letter, your cash value may be insufficient to pay your policy charges. Additional payments may be necessary to prevent your policy from terminating. If this is the case, you will receive a notification stating the minimum amount to maintain your coverage.

Please contact your sales representative to determine what planned premiums will be required going forward to maintain guaranteed coverage to meet your needs.

If you have any questions, please contact your representative or call our Customer Service Center at 1-800-334-4298 Monday through Friday between 9 a.m. and 6 p.m., ET.

Thank you for doing business with MetLife.

Sincerely,

Sandra Hyacinthe
Remittance Reconciliation Unit

Please return this letter with your payment to:
MetLife
PO Box 371888
Pittsburgh PA 15250-7888

Policy Number: [REDACTED]
Insured Name: [REDACTED]

Due Date: by January 4, 2017
Required Amount: $23568.66
Payment: $______________

Please make your check payable to MetLife

UL5500 (12/2007)

EXHIBIT J

Summary of Expenses

Amount	Description
$118,806	Quarterly interest payment on bank loan
$215,000	Litigation settlement
$600,000	Patent litigation funding
$75,000	Retainer for bankruptcy counsel
$55,000	Retainer to pay counsel for lien appeal
$100,000	Payments to counsel in litigation matters
~$250,000	Basic operating expenses, including portfolio management
$345,203	Life insurance premiums
$881,250	D&O policy premium
$260,000	Barge litigation funding
~$40,000	Maintenance and environmental work in connection with oil and gas company investment
$200,000	Houlihan Lokey retainer