

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (DLI)(VMS)

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. :  
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**THE RECEIVER’S INITIAL STATUS REPORT TO THE COURT**

Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, 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. (the “*Receivership Entities*” or “*Platinum*”), by her undersigned counsel, hereby submits this initial status report (the “*Status Report*”) pursuant to the Court’s request.

At a hearing held on July 7, 2017, the Court requested that the Receiver prepare a report that provides recommendations regarding the disposition of (i) fee and retention applications pending before the Court; and (ii) notices of appearance filed by interested parties. The Receiver’s recommendations with respect to the aforementioned court filings are presented in Sections II and III, respectively, of this report. This report begins with a brief summary of the

activities the Receiver, with the assistance of her legal and financial advisors (collectively, the “**Receivership Team**”), has performed to date.<sup>1</sup>

I.

**THE RECEIVER’S ACTIONS TO DATE**

**A. Transition Activities**

Immediately following the July 7<sup>th</sup> hearing, the Receiver met with the general counsel of the Receivership Entities to discuss critical issues facing the Receivership Entities. The next business day, the Receivership Team conferred telephonically with the prior receiver, Bart Schwartz (the “**Prior Receiver**”), and met in-person with the Prior Receiver’s financial and legal advisors to discuss, among other things, the status of the Receivership, with a focus on matters requiring immediate attention. Of such matters, of primary importance for the Receiver was asserting control over Platinum’s books, records and accounts, as well as overseeing its accounting, cash management and budgeting processes.

The Receiver and her team requested the Prior Receiver and his team (both legal and financial) to provide the Receiver and Receivership Team with access to any post-receivership systems, as well as their analyses, memoranda, recommendations and conclusions. Although the Prior Receiver and his team generally have been cooperative and have indicated a willingness to assist with the transition, they did not develop, and have been unable to provide, any written analyses and work product that the Receiver is able to evaluate and use as a basis for Receivership decisions. Because of a deficit of post-receivership systems, written analyses and work product, the Receiver and the Receivership Team have been required to devote a substantial

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<sup>1</sup> By Order dated July 6, 2017, the Court appointed Melanie L. Cyganowski as Receiver for the Receivership Entities. On July 21, 2017, the Court approved the retention of Otterbourg, P.C. (“**Otterbourg**”) as legal counsel to the Receiver, as well as the retention of Goldin Associates LLC (“**Goldin**”) as financial advisor to the Receiver.

amount of time to developing post-receivership systems, and to creating such analyses and work product as are necessary and appropriate to enable the Receiver to make, and support, determinations on behalf of the Receivership.

**1. Control of Bank and Brokerage Accounts**

Within the first week of her tenure, the Receiver notified Platinum's banking and brokerage firms of her appointment (and, concomitantly, the resignation of the Prior Receiver). Thereafter, signature authority for the bank accounts was transferred to the Receiver and her designated alternate, Adam Silverstein, a partner at Otterbourg and a senior member of the Receivership Team. Only the Receiver and Mr. Silverstein may authorize the issuance of checks and wire transfers from these accounts and, unless the Receiver is unable to perform this task, Mr. Silverstein will only authorize issuance of payment upon the Receiver's prior approval.

**2. Control of Books and Records**

The Receivership Team also took immediate steps to assert control over the Receivership Entities' books and records. The Receivership Entities' books and records were located at Platinum's offices, and on Platinum's server. Shortly after the Receiver's appointment, the Receivership Team obtained access to the accounting systems of the Receivership Entities, which include the QuickBooks systems of the pertinent master funds, management companies and affiliates. The Receivership Team, having acquired access to Platinum's general ledger, also undertook to reconcile the July 6, 2017 opening and closing balances of the Receivership Entities' bank accounts, brokerage accounts and investment portfolio. The Receivership Team did not identify any discrepancies.

The Receivership Team directed that no documents could be destroyed and also confirmed that all document destruction policies at the Receivership Entities were suspended,

that all documents are being preserved, and that Platinum has an offsite disaster recovery system for its electronic records should it ever become necessary. The Receivership Team also met with Platinum's IT director to ensure that only approved users have access to certain files and ensured that certain protocols are in place concerning the resetting of passwords and immediate suspension of access to online files following the termination of an employee.

The Receivership Team also has initiated systems for the storage and sharing of post-receivership analyses, work product, scheduling and communication amongst the team. Specifically, the Receivership Team has created electronic files specific to each asset and project that are centrally maintained while being accessible to each team member on a confidential basis.

### **3. Cash Management**

The Receivership Team has instituted a variety of cash disbursement, budgeting and control protocols, including: (i) preparing a 13-Week Cash Receipts and Disbursements Forecast ("*13-Week Forecast*"); (ii) performing weekly actual vs. forecasted variance analyses; (iii) establishing standardized procedures over the review and approvals of disbursements; and (iv) conducting daily and weekly reconciliations of Platinum's cash and brokerage accounts. The aforementioned protocols are aimed, first and foremost, at minimizing the prospect of a sudden cash crisis. Equally important, the 13-Week Forecast enables the Receiver and her team to better evaluate a given course of action with respect to any particular asset by having readily available the recurring costs and expenditures required with respect to that asset.

The Receivership Team also developed and implemented procedures regarding the review and approvals of disbursements. On a weekly basis, cash disbursements for the following week are forecasted based on the existing 13-Week Forecast and updates are made based on any new information. All requests for disbursements are made in writing, with details and the basis

for the disbursement provided to the Receiver, following which, the Receiver approves of the disbursement, and when the wire is ready, the Receiver herself is responsible for approving the wire. Similarly, the team employs a “look-back” to ensure that funds were only expended for the purposes approved and in accordance with the prior authorizations.

**B. Interactions with Third Parties**

**1. Website**

The Receiver is in the final stages of developing a new website for this Receivership. This website, which the Receiver expects to go “live” the week of August 14, 2017, will provide investors and other interested parties with, among other things, periodic status reports, access to court documents and answers to frequently asked questions. The website address will be [www.PlatinumReceivership.com](http://www.PlatinumReceivership.com). Visitors to the Prior Receiver’s website and the SEC’s website will be redirected to the newly established one.

**2. Hotline, P.O. Box and Email Address**

The Receiver also established several means by which investors and other interested parties can communicate with the Receiver. Details relating to the dedicated phone line, P.O. Box and email address can be found below:

Toll-Free Hotline (US and Canada): 844-402-8563

PO Box for Platinum Receiver: PO Box 10482, Dublin, OH 43017-4082

Email address: [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com)

**3. PPVA Joint Liquidators**

The Receiver has had multiple conferences, both telephonic and in-person, with the Cayman Islands court-appointed Joint Official Liquidators (collectively, the “*PPVA Joint Liquidators*”) and/or their representatives for each of (i) Platinum Partners Value Arbitrage Fund

L.P. (the “*Master Fund*”); (ii) Platinum Partners Value Arbitrage Fund (International) Limited (the “*International Feeder Fund*”); and (iii) Platinum Partners Value Arbitrage Intermediate Fund Ltd (the “*Intermediate Fund*,” and, together with the Master Fund and the International Feeder Fund, the “*PPVA Funds*”). The meetings with the PPVA Joint Liquidators have been productive and a solid working relationship has been formed. The parties have agreed that it is in the best interest of all parties to work collaboratively to maximize the monetization of the various assets in which the Receivership Entities and one or more of the PPVA Funds have an actual or claimed interest. Following the monetization of the assets, the parties will work together to determine the respective interests of each to the proceeds of the assets, which ideally can be achieved without protracted and costly litigation.<sup>2</sup> The parties also have agreed to share non-privileged information, which includes certain valuation analyses pertaining to joint portfolio investments.

#### **4. Investors and Other Parties in Interest**

The Receiver has been deluged with inquiries, requests and communications from investors and other interested parties. Members of the Receivership Team have been tasked with, and have been, responding, in due course, to such inquiries, requests and communications. The Receiver has had or has scheduled meetings with other parties in interest, including investor groups and counsel for certain of the Defendants. To the extent possible, the Receiver has

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<sup>2</sup> The Receivership Entities and the PPVA Funds are joint investors in several investments and the PPVA Funds have questioned the propriety of certain transfers between the PPVA Funds and the Receivership Entities that occurred prior to the Receivership. The Receivership Entities are currently holding the proceeds of certain transactions totaling approximately \$7.6 million (the “*Funds*”) in which the Master Fund claims a financial, legal or other interest. At this time, the Receiver is not taking a position on the ultimate ownership of the Funds. However, the Receiver has agreed to segregate the Funds by way of a bookkeeping entry and, in the event she is required to use these Funds, she will, when able, replace the Funds and maintain the segregated bookkeeping entry. All of these actions are without prejudice or waiver of the positions and claims of the respective estates as between and among them.

attempted to keep open lines of communication with the various parties, and expects to do so throughout the duration of this Receivership.

## **5. The SEC**

The Receiver and her team has met with the SEC to discuss the transition, review the proposed amended Order Appointing the Receiver and consult with respect to various receivership issues. In like manner to her efforts with regard to investors and third parties, the Receiver intends to keep an open line of communication with the SEC and its counsel.

### **C. Evaluation of Portfolio Assets**

The opening investment portfolio consisted of 90 investments in 69 entities. The assets of the Receivership Entities are diverse, but generally fall into three main asset categories: (i) life settlement investments (*e.g.*, investments in life insurance policies), (ii) litigation finance investments,<sup>3</sup> and (iii) “other” assets, which are primarily concentrated in the metals and mining and energy sectors, in companies that are mostly in the developmental stages. The nature of the Receivership Entities’ investments in the “other” assets varies. In some cases the Receivership Entities own a debt position, in others an equity position, and in others it may be a combination of the two. The debt holdings also vary from senior positions, subordinate positions, or in some cases, the Receivership Entity may have sold a 100% participation in its debt holding and may only maintain a residual interest.

The Receivership Team’s efforts to evaluate these investments are at an early stage; final decisions regarding the disposition of the overwhelming majority of these assets have yet to be

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<sup>3</sup> Platinum Partners Credit Opportunities Master Fund L.P., through a series of special purpose limited liability companies, each called Hamilton Capital, provides litigation financing to law firms requiring short-term or growth capital and corporate and individual plaintiffs requiring capital to pursue litigation. The law firm loans are typically collateralized by the law firm’s portfolio of existing cases and anticipated revenue, and the corporate and individual plaintiff’s loans are secured by anticipated recoveries from a specific case or cases.

made, and the ultimate value of these investments may differ materially from those of Platinum's prior management. Gaining a prompt and comprehensive understanding of the Receivership Entities' investment positions has been challenging and has required substantial time. The Receiver has not had the benefit of written analyses and work product concerning these investments, and has encountered a lack of documentation associated with such transactions. To the extent such documents exist, their disorganization has impeded a prompt analysis. The Receivership Team has spent considerable time trying to assemble, organize and/or recreate the files for the investments and undertake a more thorough financial and legal analysis of the Receivership Entities' position(s) in each, the rights of the Receivership Entity in the capital structure and pursuant to the operative documents, assessing the maintenance costs of the asset, and options available to the Receiver.

To date, the Receivership Team has prioritized the assessment of investments for which a funding request has been made, as well as investments that are in liquidation. With respect to each of these investments, the Receivership Team has attempted to ascertain, through available documentation, (i) the nature of the Receivership Entities' investment, including where it falls in the capital structure; and (ii) the purpose and necessity of the request, including whether it should be funded by another entity higher in the debt structure.

At this time, until a more thorough review is completed, the Receiver is only making payments that are necessary to maintain or preserve the value of an asset (*e.g.*, lease payment, premium payment on a life insurance policy, etc.). The Receiver has not determined if any assets warrant any capital investment beyond what is necessary to preserve the asset until it can be assessed and determined the best manner in which it may be monetized for the benefit of the investors and creditors. This is a particular challenge because many of the investments made by



the Receivership Entities were investments in enterprises that are still in the developmental stage, which at this juncture have no established market value, with any future value being highly speculative and, in some instances, requiring significant additional capital investment to even have the possibility of bearing fruit down the road.

As part of her review, the Receiver requested that each legacy portfolio manager provide memos on each of the investments under their purview. Following the delivery of these memos, the Receivership Team members have met with, or will be meeting with, the relevant portfolio manager to discuss the pertinent investments, with a focus on maintenance costs as well as possible liquidation options.

During the short time that the Receiver has been in control of the Receivership Entities, certain investments totaling approximately \$8.6 million have been liquidated or are on the verge of liquidation.<sup>4</sup> None of these assets has been liquidated in “fire sale” fashion. Indeed, to the contrary, one of these investments was monetized at par value. The Receiver believes that the life settlement and certain of the litigation finance investments are liquid and that the Receivership estate can expect to realize additional funds from their liquidation in the next several months.

As a general matter, however, the Receiver has not found support for the values reflected on Platinum’s books or for certain early indications of value in the Receivership. The Receiver is looking forward to working with Houlihan Lokey and to developing supportable valuation assessments and conclusions. *See Section II.B. infra.*

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<sup>4</sup> The \$8.6 million is comprised of the following: (i) Katrina Barge (litigation finance investment) - \$5.6 million, (ii) Blumont (stock sale) - \$1.2 million, and (iii) Martin Kenney (litigation finance investment) - \$1.8 million.

## II.

### POSITION ON PENDING APPLICATIONS

#### **A. Application to retain PricewaterhouseCoopers LLP (“PwC”) to provide limited professional tax services for the Receivership Entities [Dkt. No. 110]**

On March 22, 2017, the Prior Receiver filed an application seeking to retain PricewaterhouseCoopers LLP (“*PwC*”) to provide limited professional tax services to the Receivership Entities. Specifically, the proposed retention was for basic tax extension preparation services only, and did not include auditing services or more complete tax preparation services. Given the limited scope of the retention, and given that the fees were projected to total less than \$20,000, the Prior Receiver sought approval to make payment to PwC for its work in connection with the engagement without need for a separate fee application, or compliance with the SEC Billing Instructions.

PwC has timely completed its services and no additional services are required. The Receiver supports the application to retain PwC and recommends that the relief be granted, at which time the Receiver will be authorized to pay PwC approximately \$19,000 for the services it rendered. The Receiver will file a notice seeking this relief.

#### **B. Application to Retain Houlihan Lokey [Dkt. No. 111]**

The Prior Receiver filed an application seeking to (the “*Houlihan Application*”) retain Houlihan Lokey Financial Advisors, Inc. (“*Houlihan*”) to assist with determining the fair value of the investments of the Receivership Entities for financial reporting purposes as well as to assist with the determination of how best to dispose of the investments. Attached to the Houlihan Application was a letter agreement dated as of February 21, 2017 (the “*Houlihan Valuation Agreement*”) entered into between Houlihan and the Prior Receiver. Houlihan had completed approximately two-thirds of its valuation work, at an approximate fee investment of

\$1 million, before it ceased work for the Prior Receiver pending approval of the Houlihan Application and assurances that it would be paid for the work performed.

The Receiver reviewed the Houlihan Valuation Agreement and met on multiple occasions with Houlihan. Based upon her discussions with the Houlihan valuation team, the amount of time that had already been invested by Houlihan in the project, the imminence of its completion, the quality of Houlihan's work, the need for the valuations to formulate a plan to dispose of the majority of the Receivership Entities' investments, and the time it would take to retain another firm to provide valuation services, the Receiver concluded that it was in the best interests of the Receivership to support the Houlihan Valuation Application.

At the request of the Receiver, Houlihan agreed to a further accommodation and the Receiver and Houlihan executed a letter addendum to the Agreement (the "*Addendum*") to revise the fee schedule. As a result of the revised fee schedule, the total fees payable to Houlihan are expected to be lowered by more than \$380,000 under the Addendum as compared to what was expected under the original Agreement. On August 8, 2017 the Receiver filed a Notice in support of the Houlihan Application and Addendum, requesting that the Court approve the Houlihan Application.

Since executing the Addendum, and payment of the \$200,000 retainer owed under the Agreement, Houlihan has resumed its valuation work.

**C. Application to Expand Receivership Estate [Dkt. No. 112]**

On March 23, 2017, the Prior Receiver filed an application (the "*Expansion Application*") seeking to expand the Receivership estate to include additional Platinum entities, including a master fund, feeder funds and management entities that are currently unsupervised. The Receiver has reviewed the Expansion Application and spoken with the general counsel, Prior Receiver, and the SEC regarding the need or benefit of including these additional entities. The

Receiver is not currently convinced that there is an imminent need for, or benefit (*i.e.*, assets greater than liabilities) from, inclusion.

The Receiver would like additional time to undertake a more thorough analysis of the potential assets and liabilities, as well as litigations and arbitrations in which the additional entities are involved, before recommending that any additional entities be included in the Receivership estate. Accordingly, the Receiver will file a notice withdrawing the Expansion Application, without prejudice to refile at a later date

**D. Fee Applications of Cooley and Guidepost [Dkt. Nos. 143 and 144]**

The Prior Receiver and its firm, Guidepost Solutions LLC (“*Guidepost*”), as well as the Prior Receiver’s counsel, Cooley LLP (“*Cooley*”), filed fee applications covering the period from each’s retention through March 31, 2017 for fees and expenses in excess of \$1.3 million and \$982,000, respectively. Each had agreed to take a discount on their fees and agreed to holdbacks.

The Receiver recommends that the Court defer consideration of the fee applications of Cooley and Guidepost without date. The Receiver recommends that related applications to file portions of the fee applications under seal and for permission to file the fee applications late [dkt nos. 139, 140, 141] be similarly deferred or deemed mooted.

**E. Application to File Portions of Wind Down Plan Under Seal [Dkt. No. 166]**

The Prior Receiver intended to file a Wind Down Plan and requested that it be filed under seal. The Receiver will not be filing the Prior Receiver’s Wind Down Plan and, accordingly, the Application to file portions of the Wind Down Plan can be denied as moot. The Receiver will file a Notice seeking this relief.

**F. Stipulation and Proposed Order Regarding Information Sharing Between Platinum Entities [Dkt. No. 172]**

The Receiver is finalizing a Confidentiality Agreement with the PPVA Funds for the sharing of all documents, subject to confidentiality and sharing restrictions. It is not currently anticipated that any documents to be shared will include potentially privilege documents. Consequently, entry into the Confidentiality Agreement will moot the need for approval of the proposed Stipulation for the Sharing of Information previously filed by the Prior Receiver (the “*ESI Stip*”), as no potentially privileged documents will be shared at this time.

Accordingly, the Receiver will be filing a Notice withdrawing the application to approve the ESI Stip, subject to later filing a new stipulation when and if it becomes necessary to share information for which the parties potentially share a joint privilege.

**G. Application to Retain and Pay Limited Scope Professionals [Dkt. No. 183]**

On June 28, 2017, the Prior Receiver sought to retain and pay certain law firms that provided discrete services to Receivership Entities and portfolio companies owned by Receivership Entities (the “*Limited Scope Professional Application*”). In addition, the Prior Receiver sought authority to pay 18 of the Limited Scope Professionals up to a set amount of money for services rendered after the first application period without filing a formal fee application. It was proposed that the Prior Receiver would submit the bills of these limited scope professionals to the SEC for review prior to making payment. At the time such fees were to be requested, a professional from each firm would submit a declaration to the SEC confirming that the information contained in the invoices was accurate. Overall, the Prior Receiver requested authority to pay the Limited Scope Professionals approximately \$392,000 (after taking into account amounts to be drawn from previously paid retainers) in past due invoices and up to \$310,000 as fees over the next six months for additional services to be rendered.

The Receiver requests that she and her professionals be afforded additional time to make a recommendation with respect to the Limited Scope Professional Application. In particular, the Receiver and her professionals want to give further analysis of the exact services provided by the various professionals, the need for the services, and whether any potential conflicts of interest were thoroughly vetted.

**H. Application to Retain and Pay Deloitte Tax [Dkt. No. 206]**

The Prior Receiver sought the retention of Deloitte Tax (“*Deloitte*”) to provide accounting services to the Receivership estate. The Receiver believes that the tax services of Deloitte are necessary and recommends that the Court approve the retention of Deloitte Tax by the Receiver. The Receiver will file a Notice seeking this relief.

**III.**

**PROCESS FOR PERMITTING APPEARANCES**

The Court requested that the Receiver provide a recommendation for a process by which parties in interest may file a response to an application (whether in support or opposition) without the Court’s docket becoming unduly cluttered and the administration of the case becoming burdensome. The Receiver recommends that parties that want to be heard on an application will not be required to file a notice of appearance or file a response on the docket, but, rather, upon the Receiver’s filing of a motion or application with this Court (which will also be posted to the Receiver’s website in addition to the Court’s ECF system), any interested party may send its response to the Receiver in lieu of filing with the Court so as to be timely received within seven days of the filing of the application or such other time period designated by the Court. Within two days of the expiration of the time period within which a party may file a response, the Receiver will collect all the responses and file an affidavit with the Court that provides a list of the responses and attaches each as an exhibit. The Receiver shall be afforded

seven days to reply to the responses or to otherwise advise the Court that no reply will be filed and the relief requested may be ruled upon by the Court.

The Receiver intends to file a motion in which she proposes this protocol for matters going forward.

#### IV.

#### CONCLUSION

The Receiver intends to file periodic status reports with the Court in addition to the required quarterly reports.

The Receiver also anticipates filing a revised Order by which she was appointed, with an opportunity for interested parties to file any statement or response as appropriate.

New York, New York  
Dated: August 10, 2017

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