

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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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.

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

**REPLY DECLARATION OF
RECEIVER BART M.
SCHWARTZ IN SUPPORT OF
JOINT MOTION OF SECURITIES
AND EXCHANGE COMMISSION
AND RECEIVER FOR
MODIFICATION OF THE
PLATINUM TRO AND
RECEIVER ORDER AND FOR
EMERGENCY RELIEF**

----- X

I, Bart M. Schwartz, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the bar of this Court, and am the court-appointed Receiver for Platinum Partners Credit Opportunities Master Fund LP (“PPCO”) and for Platinum Partners Liquid Opportunity Fund (USA), LP, Platinum Liquid Opportunity Management (NY) LLC and related entities (collectively, “PPLO”), among other Platinum entities (collectively, the “Receivership Entities”). I submit this Reply Declaration in response to the opposition papers filed by the Bankruptcy Litigation Trustee [Docket Nos. 36 & 37].

2. The information set forth in this Reply Declaration is based on my personal knowledge, books and records of the Receivership Entities, and information furnished to me by my counsel, and Platinum employees and Guidepost employees who are assisting me in carrying out the Receivership. All defined terms herein have the same meaning as in the Declaration I submitted to the Court on January 9, 2017 (the “First Schwartz Decl.”) [Docket No. 22].

The Trustee's Agreement to a Portion of the Relief Sought by the SEC and the Receiver

3. The Joint Motion filed by the SEC and the Receiver on January 9, 2017 (the "Joint Motion") [Docket Nos. 20 – 24], sought to (a) stay an adversary proceeding in Texas bankruptcy court brought by the Bankruptcy Litigation Trustee and assigned Cause No. 16-03237 (the "Fraudulent Transfer Action"), (b) enjoin enforcement of a temporary restraining order issued in the Fraudulent Transfer Action (the "Black Elk TRO"), and (c) authorize me to make approximately \$3.15 million in urgently needed expenditures.¹

4. On January 10, 2017, the Bankruptcy Litigation Trustee's counsel wrote to the Court asking that the relief sought be denied until the Trustee could be heard on the merits. On January 11, 2017, the Court directed that the Bankruptcy Litigation Trustee and the named defendants in the Eastern District of New York respond to the Joint Motion by January 17, and scheduled a hearing on the Order to Show Cause on January 31 at 11:00 a.m.

5. On January 11, 2017, counsel for the Bankruptcy Litigation Trustee called my counsel in New York and advised that the Bankruptcy Litigation Trustee did not want to interfere with my ability to carry out my responsibilities, and would likely agree to approve all the expenditures listed in Exhibit J to my First Declaration [Docket 22-10]. The Trustee's counsel asked my counsel to send an email memorializing the call. My counsel did so, and

¹ PPCO is a named defendant in the Fraudulent Transfer Action. I am the Receiver of PPCO and its management company, Platinum Credit Management LP, and other related entities. When I submitted my original declaration I understood that the defendant in the Fraudulent Transfer Action named Platinum Partners Liquid Opportunities Master Fund LP and alleged to be a Delaware entity was affiliated with Platinum Liquid Opportunity Management (NY) LLC and Platinum Partners Liquid Opportunity Fund (USA) L.P. and related entities, for which I am also the Receiver. As a result of questions put to me by the Bankruptcy Litigation Trustee at my deposition last week, I have recently come to understand that there may be no such Delaware entity and am no longer sure of what entity the Bankruptcy Litigation Trustee meant to name in the Fraudulent Transfer Action. Until that confusion is resolved with the Bankruptcy Litigation Trustee, I am continuing to refer to that other defendant as PPLO.

received an email that afternoon confirming that the Bankruptcy Litigation Trustee had approved *all* the payments outlined by me in Exhibit J. While I was not on that call, I was given the emails in question, and they are attached hereto as Exhibit K.

6. While the Trustee's January 11 email mooted the portion of the Joint Motion seeking to make certain specified payments, the issue of my ongoing ability to make payments out of Receivership Property was not resolved. I need to make payments for rent, salaries, utilities, portfolio management, valuation experts, regular and forensic accountants, lawyers and the like, on a regular basis. I also need to make payments to support the Receivership Entities' investments. PPCO's portfolio contains a number of investments that are believed to have the potential to produce substantial value, if properly managed. However, expenditures must be made to realize that value (*e.g.*, life insurance policies require premiums to be paid, litigation funding arrangements require counsel to be paid).

7. Unless the Texas bankruptcy court denies the pending motion for the preliminary injunction (scheduled to be heard on January 26) I still need this Court to stay the Fraudulent Transfer Action and bar the Bankruptcy Litigation Trustee from enforcing the Black Elk TRO or any preliminary injunction that is issued in the Fraudulent Transfer Action if I am to discharge my duties to this Court as Receiver.²

The Funds Allegedly Transferred by Black Elk to PPCO and PPLO Are Not In My Possession

8. The Complaint in the Fraudulent Transfer Action seeks to recover an alleged fraudulent transfer of \$24,600,584.31 to PPCO on August 20, 2014 and an alleged fraudulent

² I have not responded to Mr. Smyser's version of the events that took place between my appointment and the filing of the Joint Motion (see Docket No. 37) because I would simply be repeating what is in my original Declaration. I plan to attend the January 31 hearing, and I will testify to any of these matters should the Court want to hear from me.

transfer of \$5 million to PPLO on August 21, 2014. (First Schwartz Decl. Ex. C at ¶ 119(d)-(e) [Docket No. 22-3]). Bank records, copies of which are attached hereto as Exhibit L, show that on August 21, 2014, those funds were transferred to Platinum Partners Black Elk Opportunities Fund LLC (“PPBE Onshore”) and Platinum Partners Black Elk Opportunities Fund International Ltd. (“PPBE Offshore”). PPBE Onshore and PPBE Offshore are *not* Receivership Entities.

9. Although I have not yet been able to conduct any forensic accounting work, I have not seen records showing that cash found its way back into the Receivership Estate. Indeed, it is my understanding that the reason for the fraud outlined in the Indictment, the SEC Complaint and the Black Elk Complaint was address the liquidity crisis that the Platinum funds were facing as a result of redemption requests that they had received and could not fulfill.

10. In any event, I can assure the Court that most if not all of the cash in the hands of the Receivership Estate is the product of investments that have nothing to do with Black Elk. When I was appointed, the Receivership Entities had just under \$4 million in cash. Almost all of that cash came from a \$6,270,000 payment received by Hamilton Capital, a PPCO subsidiary that engages in litigation funding activities, on December 2, 2016, from a litigation funding investment. As of the Joint Motion, the Receivership Entities had almost \$13 million in cash. Almost all of that cash came from the December 2, 2016 payment to Hamilton, and a \$10,803,235 payment made to Hamilton on December 21, 2016, on account of a different litigation funding investment.

11. I expect to obtain additional cash in the near future as a result of payouts on investments made by PPCO, or from selling Receivership Property (in consultation with the SEC and subject to Court approval, where necessary). I intend to use those funds to maintain the Receivership Entities’ worthwhile investments (*e.g.*, life insurance policies, litigation funding)

and to make expenditures to further protect the value of those businesses controlled by the Receivership Entities that I determine can generate a cash flow to be used to pay injured parties. For example, PPCO has potentially significant investments in natural resources that do not currently produce cash flow but that could if properly managed and certain needed expenditures were made.

12. The preliminary injunction requested by the Bankruptcy Litigation Trustee would prevent me from spending any money until PPCO and PPLO had accumulated \$29.6 million in cash. That cash would remain frozen in Texas. Such an injunction would prevent me from preserving the value of Receivership Property for the benefit of all injured creditors and investors.

The Trust is But One Claimant Among Many

13. The Trustee currently has a \$29.6 million unsecured contingent claim against PPCO and PPLO. While the Trust may ultimately be able to establish that Platinum principals engaged in fraud and that transfers were made to PPCO and PPLO as a result of that fraud, the Trust is but one unsecured claimant among many.

14. My staff is presently aware of over \$85.5 million in purported PPCO/PPLO secured and unsecured debt (not counting Black Elk, claims of employees and insiders or investors), and over \$33 million in unpaid redemptions. The most recent unaudited net asset values (“NAVs”) calculated by Platinum management for PPCO and PPLO total approximately \$543 million which means there are investors are likely to be submitting claims for over a half-billion dollars. While I might well value those claims differently, those NAVs give some indication as to the magnitude of the investor claims I am likely to receive.

15. And while the Black Elk Complaint alleges that Black Elk was defrauded, the facts alleged in the Indictment and SEC Complaint indicate that many persons and entities were

also defrauded. *See, e.g.*, SEC Compl. ¶¶ 126 (alleging misrepresentations and “efforts to dissuade investors from redeeming”); 128 (alleging Nordlicht’s omission of material information to investor, 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); 130 (alleging Landesman persuaded several investors to postpone their redemptions without disclosing PPVA’s liquidity crisis) [Docket No. 1].

The Texas Adversary Proceeding Should Be Stayed

16. It is my understanding that the only reason the Receiver Order did not stay the Fraudulent Transfer Action and all other bankruptcy cases is because the SEC asked the Court to carve out such proceedings based on the mistaken belief by counsel for the TRO Defendants that such a carve-out would protect the Receivership Entities and that under ordinary circumstances all civil litigation (other than this case) would have been stayed.

17. The Texas adversary proceeding has been an enormous distraction since I was appointed Receiver. It has continued to be a distraction since the Joint Motion was filed. On January 20, I was required to have my deposition taken, and I am scheduled to travel to Texas for the preliminary injunction hearing scheduled for January 26.

18. If the adversary proceeding is permitted to continue, there will be discovery requests and other matters that will continue to be a drain on my time, and the time of my staff, and that will force the Receivership Entities to incur legal fees that could be better used to pay the claims of creditors and investors. Additional detail is provided in the accompanying declaration of Christopher D. Lindstrom [Docket No. 45].

19. Although I have devoted much time and effort to attempting to untangle the Receivership Entities’ affairs since my appointment, there is a great deal that remains to be done.

Of particular importance, I have not yet been able to independently value the Receivership Entities' assets, engage in forensic accounting work, or investigate potential claims against Platinum's managers, other members of the Platinum fund family, and third parties. Once I complete my initial investigation, I will need to develop a Liquidation Plan for the equitable distribution and satisfaction of creditor and investor claims, working under the guidance of the SEC.

20. The Trustee notes that prior to my appointment as Receiver I served as an independent oversight advisor for Platinum, in which capacity I acted as liaison with the SEC, among other things. The Trustee suggests that I am well versed in the Receivership Entities' affairs as a result, and do not need a stay. (Response at 20) [Docket No. 36]. My role as independent oversight advisor was quite limited, and I did not have the power or the access to the Receivership Entities accounts that I acquired upon my appointment as Receiver. Further, my work was forward-looking; I did not investigate past transactions or do any forensic accounting work.

21. The relief I seek is for this Court to issue the blanket stay typically implemented when the SEC obtains the appointment of a Receiver. In essence, the Bankruptcy Litigation Trustee requests a deviation from that standard operating procedure. But for the handwritten changes made by the SEC to the SEC's original proposed order, the standard stay would be in place, and the relief sought would be unnecessary. If this Court deletes the handwritten portions of ¶ 25 of the Receiver Order and Section IX of the Platinum TRO, I will be able to proceed in my duties without the distractions presently posed by the Texas adversary proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 24, 2017
New York, New York

Bart M. Schwartz / cgt

Bart M. Schwartz

EXHIBIT K

From: Smyser, Craig <csmyser@skv.com>
Sent: Wednesday, January 11, 2017 3:13 PM
To: Barenholtz, Celia Goldwag
Cc: Levine, Alan
Subject: RE: Activity in Case 1:16-cv-06848-DLI-VMS United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC et al Order to Show Cause

Celia,

The Trustee confirms that to the extent necessary he approves the payments of the expenses set forth in the Receiver's declaration (enumerated at Ex. J of the declaration).

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

[website](#) | [bio](#) | [linkedin](#) | [vCard](#) | [map](#) | [email](#)

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From: Barenholtz, Celia Goldwag [mailto:cbarenholtz@cooley.com]
Sent: Wednesday, January 11, 2017 11:20 AM
To: Smyser, Craig
Cc: Levine, Alan
Subject: FW: Activity in Case 1:16-cv-06848-DLI-VMS United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC et al Order to Show Cause

This confirms our conversation of a few moments ago that you have approved the payment of all the expenses set forth in the Receiver's declaration (enumerated at Ex. J of the declaration) subject to obtaining the approval of the Trustee which you expect to have within a few hours. Thank you for your cooperation. Celia

Celia Goldwag Barenholtz
Cooley LLP • 1114 Avenue of the Americas
New York, NY 10036
Direct: (212) 479-6330 • Fax: (212) 479-6275
Bio: www.cooley.com/cbarenholtz • Practice: www.cooley.com/litigation

From: ecf_bounces@nyed.uscourts.gov [mailto:ecf_bounces@nyed.uscourts.gov]
Sent: Wednesday, January 11, 2017 10:00 AM
To: nobody@nyed.uscourts.gov

Subject: Activity in Case 1:16-cv-06848-DLI-VMS United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC et al Order to Show Cause

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/11/2017 at 10:00 AM EST and filed on 1/11/2017

Case Name: United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC et al

Case Number: [1:16-cv-06848-DLI-VMS](#)

Filer:

Document Number: No document attached

Docket Text:

ORDER TO SHOW CAUSE -- On January 9, 2017, an application was made to the Court by the SEC and Receiver, inter alia, for an order modifying the orders entered on December 19, 2016, issuing a Temporary Restraining Order and appointing a Receiver, to enjoin a certain bankruptcy proceeding relating to this case and otherwise restraining the Bankruptcy Litigation Trustee from interfering with the duties of the Receiver and authorizing the Receiver to take certain action. [See Docket Entry #21] Accordingly, it is hereby ORDERED that the Bankruptcy Litigation Trustee, Richard Schmidt, and the named defendants to this action respond to this application NO LATER THAN 5:00 p.m. January 17, 2017. Service shall be made by delivering the papers any of the following methods: (a) on the SEC by fax to (212) 336-1324, email at JacobsonN@sec.gov, or hand delivery or overnight courier service to the Commission's counsel, Neal Jacobson, Esq., at the Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281, and (b) on the Receiver by email at cbarenholtz@cooley.com or overnight courier service on the Receiver's counsel Celia Goldwag Barenholtz, Esq., Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036. NO LATER THAN January 24, 2017, at 5:00 p.m., the SEC and Receiver shall serve, by the most expeditious means available, their reply papers upon the Bankruptcy Litigation Trustee or his counsel, and the named defendants. Two hard courtesy copies of all papers submitted must be forwarded to chambers IMMEDIATELY upon filing. An Order to Show Cause hearing shall be held on January 31, 2017, PROMPTLY at 11:00 AM in Courtroom 4A South of the Brooklyn Federal Courthouse, 225 Cadman Plaza East. Any attorney appearing on this matter or filing papers must be admitted to practice before this Court and be in good standing with the Court. So Ordered by Chief Judge Dora Lizette Irizarry on 1/11/2017. (Carosella, Christy)

1:16-cv-06848-DLI-VMS Notice has been electronically mailed to:

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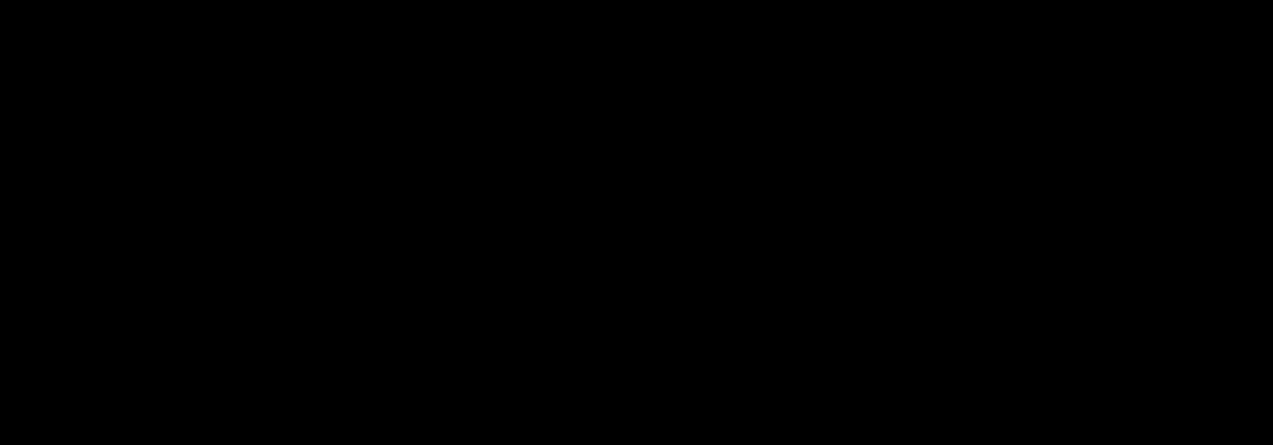
EXHIBIT L

ACCOUNT DETAIL CONTINUED FOR PERIOD AUGUST 01, 2014 - AUGUST 29, 2014

Date Description Deposits/Credits Withdrawals/Debits Resulting Balance



08/20	Wire transfer deposit BLACK ELK ENERGY OFFSHORE	\$24,600,584.31		\$26,373,928.59
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08/21	Wire transfer deposit PLATINUM PARTNER S BLACK EL	\$5,282,388.24		\$31,537,451.55
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08/21	Wire transfer deposit PLATINUM PARTNER S BLACK EL	\$1,009,872.51		\$32,547,324.06
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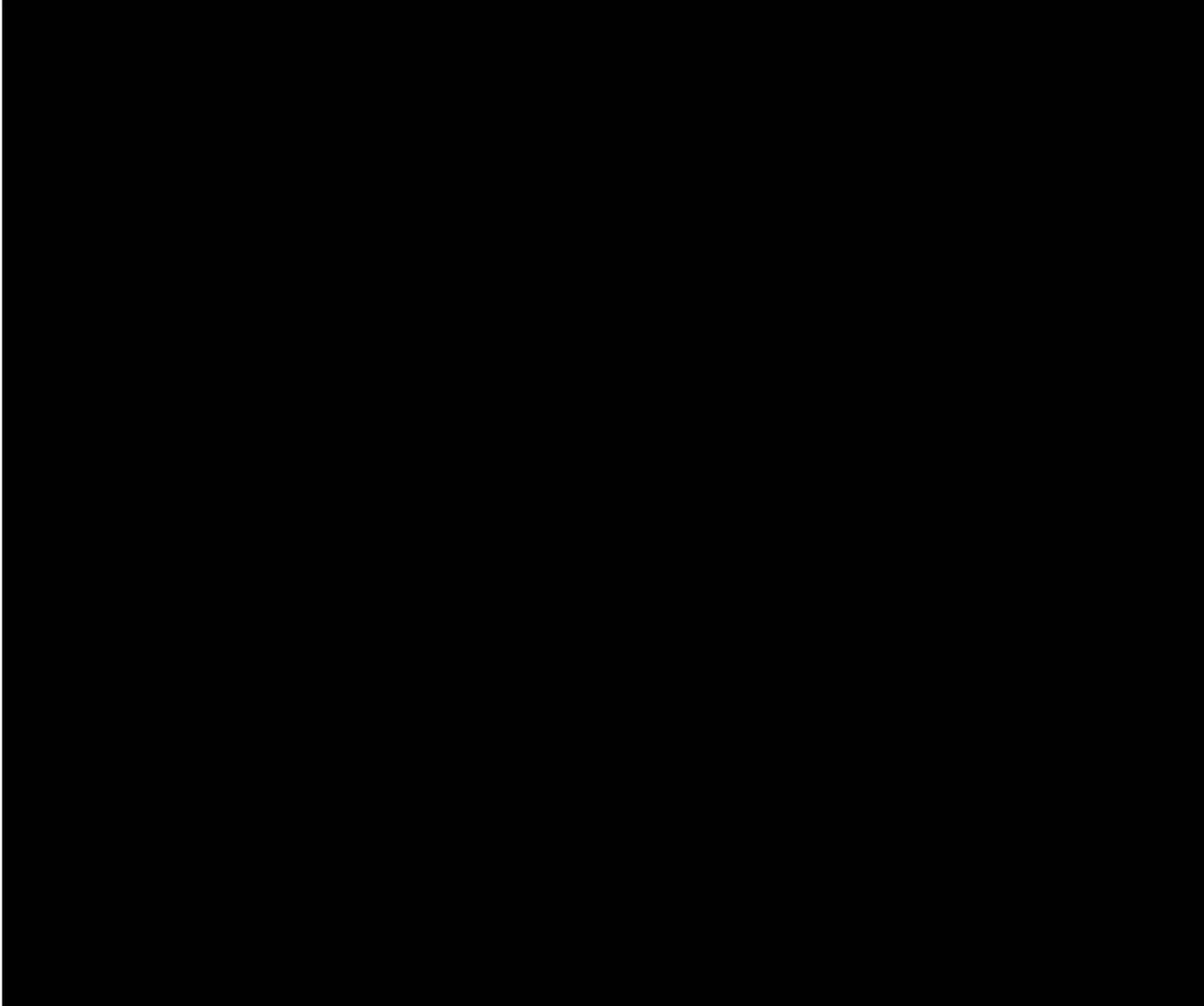
MANAGE YOUR CASH

CASH MANAGEMENT CHECKING MONEY MARKET CDs LOANS

PLATINUM PARTNERS CR OPPORTUNITIES MASTE

ACCOUNT DETAIL CONTINUED FOR PERIOD AUGUST 01, 2014 - AUGUST 29, 2014

Date	Description	Deposits/Credits	Withdrawals/Debits	Resulting Balance
08/21	Wire transfer withdrawal Platinum Partner s Black El [REDACTED]	PPDE Onshore	\$10,299,965.16	\$19,499,213.83
08/21	Wire transfer withdrawal Platinum Partner s Black El [REDACTED]	PPDE Offshore	\$15,630,097.75	\$3,869,116.08



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PPCO & PPLO 000004



Date 8/29/14 Page 3
 Account Number Acct Ending [REDACTED]
 Enclosures 11

PLATINUM PARTNERS LIQUID OPPORTUNITY
 MASTER FUND L.P.
 C/O PLATINUM PARTNERS
 152 W 57TH ST FL 4
 NEW YORK NY 10019-3310

CHECKING Acct Ending [REDACTED] (Continued)

Activity in Date Order	Checks/	Deposits/	Daily Balance
Date Description	Debits	Credits	

[REDACTED]

8/21 transferr from acct [REDACTED] to acct # [REDACTED]		7,814,096.89	8,611,225.79
8/21 IT: BLACK ELK ENERGY OFFSHORE PARTIAL SERIES E PAYMENT		5,000,000.00	13,611,225.79

[REDACTED]

8/21 OT: PLATINUM PARTNERS BLACK EL BOND PURCHASE AT AMORTIZED COS	7,855,145.55		6,656,080.24
8/21 OT: PLATINUM PARTNERS BLACK EL BOND PURCHASE AT AMORTIZED COS	4,785,951.30		1,870,128.94
8/21 OT: PLATINUM PARTNERS BLACK EL	165,514.27		1,704,614.67
8/21 OT: PLATINUM PARTNERS BLACK EL PURCHASED INTEREST Q3	146,995.73		1,557,618.94
8/21 OT: PLATINUM PARTNERS BLACK EL ACCRUED INTEREST OWED FROM Q2	74,303.63		1,483,315.31
8/21 OT: PLATINUM PARTNERS BLACK EL ACCRUED INTEREST OWED FROM Q2	73,885.09		1,409,430.22

[REDACTED]