



Celia Goldwag Barenholtz
+1 212 479 6330
cbarenholtz@cooley.com

Via ECF

March 31, 2017

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

Re: *SEC v. Platinum Management (NY) LLC et al*, Civil Case No. 16-cv-6848 (DLI)(VMS)

Dear Chief Judge Irizarry:

We are counsel to Bart M. Schwartz (the "Receiver"), the court-appointed receiver for defendant Platinum Credit Management, L.P. ("Platinum Credit") and certain related entities (collectively, the "Receivership Entities"), and write in further support of the Receiver's March 23, 2017 letter requesting that this Court expand the scope of the current receivership to include nine additional Platinum entities [Docket No. 112, the "Entities Application"].¹ As no objection has been raised as to the addition of the Unsupervised PPCO Entities or the Unsupervised PPLO Entities, we respond only to concerns voiced by defendant David Levy as to the addition of Platinum Management (NY) LLC ("PMNY") to the Receivership and the concerns raised by Levy and defendant Mark Nordlicht regarding control over PMNY's attorney-client privilege. Docket Nos. 119 and 120; see also Docket No. 122 (Letter of Daniel Small joining the objections of Messrs. Levy and Nordlicht).

Mr. Levy asserts that adding PMNY to the Receivership would serve no purpose because PMNY is no longer an operating entity. PMNY currently faces a number of pending litigations, which have not been stayed. The Receiver has been required to devote attention to those litigations, as PMNY has not been in a position to defend them effectively. Adding PMNY to the Receivership will stay those litigations, thus removing a needless distraction from the Receiver and his staff. Moreover, PMNY contracted with creditors who provided services to both PMNY and various Receivership Entities. Absent supervision and its attendant protections, these creditors could force PMNY into involuntary bankruptcy, complicating the Receiver's efforts to make an equitable distribution of Receivership assets to investors and creditors. Thus, even though PMNY is no longer an operating entity, adding it to the Receiver's supervision would provide a benefit to the Receivership Entities and to PMNY.

The defendants assert that adding PMNY to the receivership might imperil the attorney-client privilege protecting documents seized in the related criminal matter. As set forth in the SEC's March 3, 2017 letter to the Court [Docket No. 105], Mr. Nordlicht, together with Platinum Credit and PMNY (the "TRO Defendants") consented to a proposed Order on Consent Imposing Preliminary Injunction and Other Relief [Docket No. 105-1]. This Court entered the proposed order on March 8, 2017 [Docket No. 106, the "Preliminary Injunction"]. As part of the agreed-upon Preliminary Injunction, the Receiver agreed that he "will not knowingly and intentionally make available to the SEC or to any third party any of the foregoing described documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other applicable privilege, without first giving reasonable notice and an opportunity to be heard to

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Entities Application.



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the individual defendants so that they may assert any privilege they may have as to such documents.” Preliminary Injunction at 5. Given that provision of the Preliminary Injunction, the Receiver included this requirement in the proposed Second Amended Receiver Order. See Docket 112-2 ¶ 35.

The government has not asked the Receiver to waive *any* privilege—much less any privilege with respect to any documents seized as a result of the search warrant issued in the criminal matter. *If* the government were to make such a request, and *if* the Receiver decided that it was in the best interests of the Receivership Entities to make such a waiver, the Receiver would first have to give notice to the individual defendants under the Preliminary Injunction and the proposed Second Amended Receiver Order. Thus, the Receiver will not be able to waive the privilege without the individual defendants being given an opportunity to be heard.

That said, controlling the privilege is important to protecting the rights of an entity that is in receivership. It may be that protecting the interests of the Receivership Entities will require waiving the privilege (*e.g.*, if the Receiver decided to sue a former Platinum attorney). For that reason, the current Receiver Order gives the Receiver the power to control the Receivership Entities’ privilege. See Order Appointing Receiver entered December 19, 2016 [Docket No. 6], as amended on January 30, 2017 (the “Receiver Order”) ¶ 35. While the Receiver does not presently intend to waive PMNY’s privilege (or the privilege belonging to any of the Receivership Entities), the Receiver needs to have the power to waive PMNY’s privilege if he determines that doing so is necessary to protect investors. In short, the Receiver’s ability to manage PMNY should not be restricted by depriving him of control over PMNY’s attorney-client privilege, particularly since the notice provision already in place under the Preliminary Injunction suffices to protect against any potential—but as-yet unrealized—threat to any privilege held by the individual defendants.

The SEC staff joins in this response. We respectfully request that the Court enter the proposed Second Amended Receiver Order adding the Unsupervised PPCO Entities, the Unsupervised PPLO Entities, and PMNY to the Receivership, under which all privilege concerns shall be addressed via the agreed-upon procedure outlined in the Preliminary Injunction and the proposed Second Amended Receiver Order.

Respectfully submitted,

/s/ Celia Goldwag Barenholtz
Celia Goldwag Barenholtz
COOLEY LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 479-6000
cbarenholtz@cooley.com

Counsel to the Receiver

cc: All counsel of record (via ECF)