

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)

**STIPULATION AND [PROPOSED]
 ORDER REGARDING
 INFORMATION SHARING
BETWEEN PLATINUM ENTITIES**

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WHEREAS Bart M. Schwartz (the “Receiver”) has been appointed as Receiver for certain entities which were part of the Platinum Partners family of hedge funds (the “Platinum Entities”), namely, Platinum Credit Management, L.P.; Platinum Partners Credit Opportunities Master Fund L.P. (“PPCO”); 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. (collectively, the “Receivership Entities”);

WHEREAS the Receiver has sought the permission of this Court to become the receiver of Platinum Partners Credit Opportunities Fund International Ltd; Platinum Partners Credit Opportunities Fund International (A) Ltd; Platinum Credit Management LLC; Platinum Credit Holdings LLC; Platinum Liquid Opportunity GP LLC; Platinum Partners Liquid Opportunity Fund (International) Ltd.; Platinum Partners Liquid Opportunity Intermediate Fund L.P.;

Platinum Partners Liquid Opportunity Master Fund L.P.; and Platinum Management (NY) LLC (“Platinum Management”) (together, the “Proposed Receivership Entities”);

WHEREAS Matthew Wright and Christopher Kennedy of RHSW (Cayman) Ltd. (the “PPVA Liquidators”) have been appointed as Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. (“PPVA”), which was a Platinum Entity;

WHEREAS Margot MacInnis and Nilani Perera of Borrelli Walsh (the “PPVA International Liquidators”) have been appointed as Joint Official Liquidators of Platinum Partners Value Arbitrage Fund (International) Limited (“PPVA International”), which was a Platinum Entity;

WHEREAS Margot MacInnis and Cosimo Borrelli, of Borrelli Walsh (Hong Kong) Limited (the “PPVA Intermediate Liquidators,” and, together with the PPVA Liquidators and the PPVA International Liquidators, the “Cayman Liquidators”)¹, serve as the Joint Official Liquidators of Platinum Partners Value Arbitrage Intermediate Fund Ltd. (“PPVA Intermediate” and together with PPVA International and PPVA, the “PPVA Funds”), which was a Platinum Entity;

WHEREAS the Receiver controls an email server, an email repository and other electronically stored documents and emails of various Platinum Entities and funds (collectively, “Platinum ESI”);

WHEREAS the Parties understand that at various points in time some of the Platinum Entities were operated by some of the same managers and used some of the same certain service providers, including attorneys, as other Platinum Entities;

¹ The Receiver and the Cayman Liquidators together shall be referred to as the “Parties.”

WHEREAS the Parties understand that some Platinum Entities made investments in some of the same assets and operating companies as other Platinum Entities;

WHEREAS the Parties understand that some of the Platinum ESI may have been created by persons who were acting for more than one Platinum Entity in creating the email or document;

WHEREAS the Parties understand that some of the Platinum ESI may have been created in the course of a joint legal representation of more than one Platinum Entity, and that any privileged emails or documents created in the course of such a joint representation would be jointly privileged as to those Entities;

WHEREAS the Receiver wishes to provide the Cayman Liquidators access to the Platinum ESI that belongs to the respective entities under their supervision without waiving any applicable attorney-client privilege or work product protection that pertains thereto;

WHEREAS under the preliminary injunction issued by this Court on March 8, 2017 [Docket No. 106] (the “Preliminary Injunction”), the Receiver cannot 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 the individual defendants so that they may assert any privilege they may have as to such documents;

IT IS HEREBY STIPULATED AND AGREED, between and among the Parties, that subject to the approval of the Court in the above-captioned action and pursuant to Rule 502(d) of the Federal Rules of Evidence:

1. LDM Global Ltd. (“LDM”), an information consultant and electronic discovery provider, will duplicate the Platinum ESI pursuant to an agreement between LDM, the Receiver, and the Cayman Liquidators (the “LDM Agreement”), to be negotiated in good faith by the Parties.
2. Under the LDM Agreement, LDM will run searches of the duplicated Platinum ESI using search terms specified in the LDM Agreement that are designed to (A) remove all documents created on or after December 19, 2016; and (B) exclude privileged emails and documents that belong solely to one or more of the Receivership Entities and/or the Proposed Receivership Entities (the “Receivership Exclusion Process”).
3. LDM will provide the Cayman Liquidators access to all remaining emails and documents produced after conducting the Receivership Exclusion Process outlined in Paragraph 2 above.
4. Pursuant to Federal Rule of Evidence 502(d) and the Order of this Court, if any material subject to any applicable privilege or protection of the Receivership Entities or the Proposed Receivership Entities (other than a privilege or protection held jointly by one or more of the Receivership Entities or the Proposed Receivership Entities on the one hand and one or more of the PPVA Funds on the other) is produced upon completion of the Receivership Exclusion Process (“Receivership Inadvertent Production Material”), the disclosure of that Receivership Inadvertent Production Material will not constitute or be deemed a waiver or forfeiture in the above-captioned matter or in any other action of any claim of privilege or work product protection that the Receiver would otherwise

be entitled to assert with respect to the Receivership Inadvertent Production Material and its subject matter. Such production and/or disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, work product, or other applicable privilege or immunity.

5. Pursuant to Federal Rule of Evidence 502(d) and the Order of this Court, if any material subject to any applicable privilege or protection of one or more of the PPVA Funds (other than a privilege or protection held jointly with one or more of the Receivership Entities, the Proposed Receivership Entities, or any of the other PPVA Funds) is retained by the Receiver upon completion of the Receivership Exclusion Process (“PPVA Funds Inadvertent Production Material” and together with Receivership Inadvertent Production Material, “Inadvertent Production Material”), the possession and/or disclosure of such PPVA Funds Inadvertent Production Material will not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection that any of the Cayman Liquidators would otherwise be entitled to assert with respect to such PPVA Funds Inadvertent Production Material and its subject matter. Such possession and/or disclosure also shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, work product, or other applicable privilege or immunity.
6. Upon learning that Inadvertent Production Material is in the possession of any of the Cayman Liquidators, as applicable, whether by a party’s own discovery of such possession or by notice by the claiming party or otherwise, the party in

possession shall, absent a dispute as to whether a document constitutes Inadvertent Production Material:

- a. refrain from any further examination or disclosure of the claimed Inadvertent Production Material;
- b. promptly deliver the claimed Inadvertent Production Material and all copies thereof (including summaries and excerpts) to the owner, and certify in writing to that fact; and
- c. not use the claimed Inadvertent Production Material for any purpose until further order of the Court.

7. In any dispute as to whether a document constitutes Inadvertent Production Material, the party claiming entitlement to the document may make an application to the Court in the above-captioned matter (a “Disclosure Motion”), following good faith efforts to meet and confer with the party in possession of the document at issue. A Disclosure Motion must be made upon notice to all the Parties hereto and to all the individual defendants in the above-captioned action, and filed under seal to the extent it discloses or describes the contents of the Inadvertent Production Material. A Disclosure Motion may not assert as a ground for compelling disclosure any party’s entry into this Stipulation, or the disclosure of the Inadvertent Production Material as a result of the process described in this Stipulation. Pending resolution of the Disclosure Motion, the Cayman Liquidators must not disclose the claimed Inadvertent Production Material to any person other than in connection with the Disclosure Motion.

8. The Cayman Liquidators may use the Receivership Documents that they receive pursuant to the Receivership Exclusion Process subject to the following conditions: (a) in the event the Cayman Liquidators plan to disseminate any such communications or documents to their staff, accountants, experts and advisors, said staff, accountants, experts and advisors agree to maintain the confidentiality of the emails and documents and (b) in the event the Cayman Liquidators plan to disseminate any emails or documents to anyone other than the persons listed in (a) above, they obtain the Receiver's prior consent, which consent will not be unreasonably withheld. "Receivership Documents" means any of the following: (x) any non-privileged document that on its face concerns the investment or other business activities of any of the Receivership Entities or Proposed Receivership Entities, and not the investment or other business activities of any of the PPVA Funds; and (y) any non-privileged record prepared or maintained by Platinum Management (including its agents, professional advisors, auditors, consultants and employees) pursuant to its obligations under an Investment Management Agreement with any of the Receivership Entities, and not pursuant to any obligation under an Investment Management Agreement with any of the PPVA Funds. Notwithstanding the foregoing, to the extent any of the Cayman Liquidators lawfully receives any document or communication from any third party (whether through discovery or otherwise) that is duplicative of a document or communication received through the Receivership Exclusion Process, the restrictions imposed under this Stipulation shall not apply to such document or communication.

9. The Cayman Liquidators may use any materials they receive pursuant to the Receivership Exclusion Process, other than Receivership Documents, for any purpose they deem appropriate in connection with the liquidation, subject to any existing confidentiality obligations they may have that do not arise under this Stipulation.
10. The Parties acknowledge that emails and documents that are subject to the attorney-client privilege or work product protection shared by entities under their supervision by virtue of a prior joint representation or prior common interest arrangement (“Jointly Privileged Materials”) will be produced through the Receivership Exclusion Process, and that the Receiver currently is in possession of such Jointly Privileged Materials. The Parties will take all measures necessary to maintain the privilege or protection afforded to Jointly Privileged Materials under New York law, and will not take any action that would cause a waiver of the privilege or protection afforded Jointly Privileged Materials under New York law without (a) obtaining the prior written consent of the representative of each other entity that holds a claim of privilege or immunity with respect to such Materials, and (b) giving the Receiver reasonable time to provide notice and an opportunity to be heard to the individual defendants as required by the Preliminary Injunction. Nothing contained herein may be deemed to prevent any of the Parties from using any Jointly Privileged Materials in which they maintain a claim of privilege or immunity without waiving such privilege or immunity. The Cayman Liquidators acknowledge that the Receiver has an obligation to give notice to the individual defendants in the above-captioned action before waiving

the attorney client privilege of any Receivership or Proposed Receivership Entity, including a privilege that attaches to any Jointly Privileged Materials, and understand and acknowledge that the Receiver is entering into this stipulation on the basis of their undertaking to comply with this paragraph.

11. The Parties reserve all rights to apply to the Court at any time for an Order (a) modifying this Stipulation, seeking further production of Platinum ESI, or opposing production of Platinum ESI, and/or (b) resolving any dispute regarding the categorization of a document as a Receivership Document or otherwise.
12. The Cayman Liquidators shall be responsible for all the fees and expenses payable to LDM under the LDM Agreement, including but not limited to LDM's fees and expenses and the costs associated with downloading emails from the email repository maintained by Global Relay. The Receiver shall not be responsible for any such fees and expenses.
13. The Cayman Liquidators will reimburse the Receiver for all reasonable and documented labor costs of current or former personnel of the Receivership Entities and/or Proposed Receivership Entities incurred in connection with implementing and carrying out this Stipulation and the LDM Agreement. The Parties will consult with each other in good faith to track and provide payment for those costs.
14. Subject to the provisions of this Stipulation, by entering into this Stipulation, the Receiver does not surrender any rights he has to access, duplicate, or otherwise control the Platinum ESI.

15. Nothing in this Stipulation shall be deemed a waiver by any of the Parties of any applicable privilege or immunity, including any attorney-client privilege held by any of the PPVA Funds, Receivership Entities, or Proposed Receivership Entities, and all such privileges and immunities are reserved.
16. The Cayman Liquidators consent to the jurisdiction of the Court in the above-captioned matter for purposes of carrying out and enforcing this Stipulation.
17. As used in this Stipulation, the word “and” shall mean “or” and vice versa.
18. None of the Parties shall be personally liable for any obligations hereunder.
19. This Stipulation may be executed in counterparts.
20. This Stipulation shall be of no effect unless so ordered by the Court.

Dated: New York, New York
June 23, 2017

/s/ Celia Goldwag Barenholtz

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SO ORDERED:

THE HON. DORA LIZETTE IRIZARRY
CHIEF UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Dated: Brooklyn, New York
June __, 2017