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June 29, 2017

VIA CM/ECF

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

**Re: *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.*,
No. 1:16-cv-06848-DLI-VMS**

Dear Chief Judge Irizarry,

We are counsel to David Levy, a defendant before Your Honor in both the pending criminal and SEC cases, as well as an investor in the Platinum Funds. We write in anticipation of the hearing scheduled for July 7 to: (1) raise with the Court our alarm at the recent conduct of the SEC in connection with the Court's appointed Receiver, Bart M. Schwartz, and in particular, the SEC's newly proposed order delineating the proposed responsibilities and tasks for a new Receiver; and (2) request that the Court direct the SEC to notify other interested investors of the relevant events so that they may be heard at the scheduled July 7 hearing should they so choose.

The joint letter of the defendants submitted to the Court on June 26, 2017 recounted some of the relevant history relating to the qualifications and appointment of Mr. Schwartz. Dkt. No. 177. That will not be repeated herein. Suffice it to say, Mr. Schwartz has extensive experience as a Receiver, has a long record of successfully dealing with challenging business and legal proceedings, and has been involved in overseeing many of Platinum's investments since June 2016. *See* Dkt. No. 1-2 at 31-32 ("Moreover, the [SEC] staff believes that Bart Schwartz and Guidepost, which are already in place as [Independent Oversight Advisor], are uniquely qualified to serve as Receiver and advisers to the Receiver, respectively."). It was thus hardly surprising that when the SEC asked that a Receiver be appointed for certain of the Platinum entities, Mr. Schwartz was tasked by the Court to use his business acumen and skill to, among other things, achieve "realization of the true and proper value of [the] Receivership Property." Dkt. No. 6 at 12.

It came as quite a shock to Mr. Levy and his counsel, therefore, when we saw the joint letter of Mr. Schwartz and the SEC, dated May 19, 2017, requesting a conference with Your Honor. That letter made clear that the SEC disagreed with Mr. Schwartz's view that the use of additional limited capital with respect to certain Fund investments would likely be to the benefit of investors and



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creditors.¹ Dkt. No. 142. As the Court had expressly authorized Mr. Schwartz to use his business judgment and experience to make just such decisions, we grew concerned that the SEC, which along with the U.S. Attorney's Office, had characterized the Fund's investments as "having no more value than a tarnished piece of cheap metal," and the Fund as "like a Ponzi scheme," was trying to interfere with Mr. Schwartz's authority and judgment seeking to maximize the value of Fund's assets and thereby make all investors whole.

Approximately a month later, Mr. Schwartz asked to resign as Receiver. Dkt. No. 170. Putting aside the transparent, non-issue of a possible conflict of interest,² it is clear from Mr. Schwartz's submission that he is beyond frustrated by the SEC's relentless opposition to his recommended steps. Mr. Schwartz was just days away from issuing his proposed plan. As part of that plan, Mr. Schwartz has indicated that he would seek to liquidate all but a handful of assets, and as to the few remaining assets he would make limited further investments in order to get far more money for investors. Dkt. No. 180 at 1. Indeed, Mr. Schwartz has made clear that these proposed additional investments in even just one of the assets could bring more than \$100 million to Platinum's investors, whereas liquidating that asset now could generate a loss. *Id.* at 2. Moreover, while Your Honor's Order called for Mr. Schwartz to be compensated for his efforts on behalf of Platinum, the SEC seemingly has sought to punish Mr. Schwartz by asking the Court to hold back 45% of his compensation. Dkt. No. 152.

In letters submitted to the Court on June 26 and 27, 2017, the concerns of investors and defendants were well articulated – replacing Mr. Schwartz at this late stage will, at a minimum, waste millions of dollars and unnecessarily delay a wind-up plan. Dkt. Nos. 177 and 178.

We write now, however, because the latest submission from the SEC appears to confirm our worst fear: the SEC is not interested in a Receiver that will bring business judgment to the challenging issues facing Platinum and seek to maximize the value of the Fund's assets for the benefit of investors and creditors, but rather someone who will have no authority to do anything other than liquidate the Fund's assets, even if that means causing losses to investors. As the SEC is an actual litigant, which has accused the defendants of perpetrating a fraud on investors by misstating the value of certain investments, we are concerned that the fire-sale being demanded by the

¹ "[T]he SEC staff and the Receiver have differing views on how the Receivership should progress. ... The Receiver believes that additional cash will be coming into the estate and that a longer term horizon is necessary for him to evaluate whether Receivership assets should be invested into certain existing investments and ongoing operations in order for him to try to obtain a higher value for the benefit of investors." Dkt. No. 142 at 1-2.

² This conflict appears to be no conflict at all, and cannot come as a surprise to the SEC, who, in selecting Mr. Schwartz as Receiver, surely reviewed his publicly available CV, which includes his work with Milberg Weiss, LLP. See <http://www.guidedpostsolutions.com/our-experts/bart-schwartz/>.



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SEC may be designed to save the SEC and the U.S. Attorney's Office from having to acknowledge that their inflammatory public comments about the Fund's investments were grounded neither in truth nor fact.

We refer the Court to Exhibit 2 to the SEC's Memorandum in Support of the Motion to Appoint Receiver Application, submitted June 26, 2017, and attached again here as Appendix A for the Court's convenience. Dkt. No. 174. This is a redline copy of the SEC's application for a new Receiver, against Your Honor's Order appointing Mr. Schwartz. As the Court will readily see, the SEC has removed nearly all sections empowering the Receiver to make decisions about the Fund's investments, and now vests authority in the Receiver only to liquidate assets. But this approach flies in the face of the Second Circuit's directive that an equitable receivership should not be used to effect a liquidation and act as an improper substitute for bankruptcy proceedings. *See SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436-38 (2d Cir. 1987). The SEC was required to, but did not, inform this Court of the Circuit's directive. *See id.* at 438. Furthermore, it is inconsistent with the SEC's own recognition, at the outset of this case, that a *receivership* was the appropriate construct for the purpose of assessing the value of the assets and, if warranted, managing them to maximize value.

While the SEC has left no doubt that it disagrees with Mr. Schwartz, it has provided no basis whatsoever to conclude that it is qualified in any way to substitute its views for his, or that its approach will best maximize the value of the Fund's assets, which is clearly the outcome this Court sought when it appointed Mr. Schwartz. Moreover, the SEC has failed entirely to justify its new request that nearly all actions of the Receiver now be undertaken only in consultation with the SEC.³

We respectfully submit that the SEC's conduct in frustrating Mr. Schwartz's efforts as Receiver is entirely inconsistent with Your Honor's Order appointing him in the first place. The Court assigned Mr. Schwartz with certain tasks. The SEC has so frustrated those tasks that an experienced professional such as Mr. Schwartz now feels compelled to resign. We further submit

³ This revised Order also seeks unilaterally to expand the scope of the Receivership. As Your Honor will recall, this expansion was initially the subject of an application made by Mr. Schwartz and – contrary to the SEC's assertions in its recent application – was partially opposed by the defendants. Specifically, the SEC has now represented to Your Honor that “Defendants Levy and Nordlicht consented to expansion of the Receivership as set forth in the Proposed Second Amended Receivership Order, but objected to the Receiver's ability to control the attorney-client privilege for Platinum Management (NY) LLC.” Dkt. No. 174 at 3. This simply is not so. In addition to opposing the Receiver's ability to control the attorney-client privilege for Platinum Management (NY) LLC (“PMNY”), Mr. Levy in fact objected to the inclusion of PMNY in the Receivership at all. Dkt. Nos. 119, 125, and 127. Your Honor has not yet ruled on this application, and should Your Honor consider accepting the SEC's newly proposed Order, we would raise our previously stated objections as to this unnecessary expansion. *See* Dkt. Nos. 112, 119, 120, 122, 125, 126, and 127.



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that the SEC's newly proposed Order reveals the SEC's true intentions: to neuter the Receiver, bar decisions that stand to enhance the position of investors and creditors, and instead require a fire-sale of Fund assets, which will surely damage the very investors the SEC is charged to protect. It would be truly alarming if the SEC's motivation here was to damage the interests of investors simply to enhance its litigation position. This tension, and the obvious conflicting interests of the SEC, makes the independence of the Receiver in this matter all the more critical.

In light of the above, we ask that the Court deny the SEC's proposed Order for the appointment of a new Receiver. We also ask that in light of these important developments and the impact they stand to impose on all investors to the Funds, the SEC be directed forthwith to take all reasonable steps to notify Platinum investors of the relevant facts relating to and the hearing scheduled for July 7, 2017.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Michael S. Sommer
Michael S. Sommer
Morris J. Fodeman

Cc: All Counsel of Record (via CM/ECF)