UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION,

Case No.: 1:18-cv-6658-JSR

MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in OFFICIAL LIQUIDATION), *et ano.*,

Plaintiffs,

v.

PLATINUM MANAGEMENT (NY) LLC, *et al.*,

Defendants.

Case No.: 1:18-cv-10936-JSR

Declaration of Michael Katz

I, Michael Katz, declare as follows:

1. I am a defendant in the above-captioned action. I have personal knowledge of the facts set forth herein.

2. I submit this declaration in support of my motion to dismiss the Second Amended Complaint (ECF No. 285) (the "SAC") in this action.

3. Attached hereto as Exhibit A is a true and correct copy of a March 13, 2016 email thread between me, Mark Nordlicht, and David Levy. A portion of Exhibit A is attached to the SAC as Exhibit 82.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 22, 2019
New York, New York

Michael Katz

Exhibit A

Gmail Michael Katz <mkatzmx@gmail.com>

Agera

3 messages

Michael Katz <mkatzmx@gmail.com> Sun, Mar 13, 2016 at 4:10 PM
To: Mark Nordlicht <mnordlicht@platinumlp.com>
Cc: David Levy <dlevy@platinumlp.com>

Mark,

After thinking about this for a few days I would like to share some thoughts on Agera and a potential sale to an insider. Believe this merits serious consideration now, some notes below on why.

Energy retail markets:

This is probably the best growth environment in over a decade because of the ample head room (spark spread) in many markets. It is a good reason to continue growing creating more value, however, this is exactly the type of thinking that got several retailers in deep trouble in the past. Probably before the end of the year utilities will finish re-setting prices eroding margins and triggering higher attrition rates. Before prices start increasing significantly there will be a "trough" of another re-set period with utilities which can take several quarters to correct, so topline revenue will not begin increasing until then. This period of time will be the least attractive for an exit (~2017) since top line will remain stagnant, margins will compress, growth will slow, and attrition will increase. We have seen this story before, it is rather predictable. For these reasons forward looking multiples are likely to be highest now.

Alternate exit strategies

IPO: Let's assume that yield does not go out of fashion and that an MLP-like exit in TMX is doable in the short to medium term even while other energy related mlps are being battered. The following factors should be considered,

Liquidity: a much higher multiple IPO will not generate a full liquidity event, cash remaining strapped for some time; cash that could be put into much higher multiple opportunities (see conclusions below) now.

Management grooming: We've discussed the need for a CEO. The market will see through a figurehead choice and to find a real guy who can successfully work with Kevin is going to take time (pp time), and be slow and painful to implement. A strategic sale now will bypass this problem, freeing up future bandwidth. It will also free up Kevin to take on other projects

Strategic buyer: In the next 24-36 months the following challenges will exist with any other credible potential buyer:

1. *Strategic buyers are wiser than in times past*: Unlike the potential insider, major sophisticated buyers have stopped trading books on RCEs but now look for and value acquisitions on the actual profitability of the book and assign much less weight to cosmetic MWh volume throughput. Gone are the days where sticky RCEs with any margin could trade at a multiple of top line revenue. Assuming that size and valuation will be linear is no longer a true. As mentioned above forward looking ebitda numbers are likely to be best now

2. *Challenging capital markets*: from the roughly 12 or so players who may be interested in the book many are battling management shakeups (NRG), bloated debt (cetrica), and past M&A activity that they are still trying to digest (Exelon). In the medium term I can't see the capital markets be kind to the sector, especially with issuance of new debt under reasonable terms or major cash acquisitions. Not saying it will not be possible but believe we will be facing headwinds as opposed to today's tailwinds.

The bottom line is that even if you don't agree with any or much of the above, surely you can agree that even in the best case scenario the amount of money potentially left on the table with a sale of Agera today (let's say 2-3X more than the current valuation) is significantly lower than any potential upside in heavily re-investing the proceeds from the sale of Agera into the Oil&Gas sector (+5-10x). This sector represents the greatest opportunity in a generation, a smart play can return the entire fund(s) several times over. Having insider knowledge and expertise in the oil & gas sector increases the handicap for success.

To summarize, a sale today to the strategic would:

- Bypass market headwinds that are around the corner
- Have a clean and full liquidity event now, bypassing complexities of a future exit with either an IPO, or with an unhealthy sector that will struggle to purchase an asset of that size
- Capitalize on an insider's willingness to purchase now
- Solve together with the sale of Implants our liquidity problem
- Create an amazing marketing story now that can help us push (alongside the reforms we've discussed) in building the AUM asp
- Free up cash to re-invest in the oil & gas sector which is a much higher multiple potential upside opportunity today than the energy retail sector

Perhaps the above merits some hard-data quantitative analysis?

Thoughts?

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Michael

Mark Nordlicht <mnordlicht@platinumlp.com> Sun, Mar 13, 2016 at 5:34 PM
To: Michael Katz <mkatzmx@gmail.com>
Cc: David Levy <dlevy@platinumlp.com>

We can debate the merits of your analysis, i agree with the majority of it... But before we spend time on it, we need an insider buying at acceptable price.

Sent from my iPhone
[Quoted text hidden]

Michael Katz <mkatzmx@gmail.com> Sun, Mar 13, 2016 at 5:55 PM
To: Mark Nordlicht <mnordlicht@platinumlp.com>
Cc: David Levy <dlevy@platinumlp.com>

Of course. Had in mind the range you mentioned, which should be in line with an above industry average fw looking multiple.
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