

**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. :
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No. 16-CV-6848 (BMC)

~~PROPOSED~~
**ORDER ESTABLISHING CLAIMS AND
INTERESTS RECONCILIATION AND VERIFICATION PROCEDURES**

Upon consideration of the motion by Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, 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, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd. and Platinum Partners Credit Opportunities Fund International (A) Ltd. (collectively, the “*Receivership Entities*,” the “*Platinum Entities*” or “*Platinum*” and each a “*Receivership Entity*” or “*Platinum Entity*”), for entry of an order approving claims and interests reconciliation and verification procedures (the “*Claims Procedures*”) in connection with claims against, and interests in, any one or more of the Receivership Entities (the “*Motion*”), the

Declaration of the Receiver and the Memorandum of Law in Support of the Motion¹, any responses or objections to the Motion, and any replies in support of the Motion, this Court finds that (i) the relief requested in the Motion is in the best interests of the Receivership Entities, Claimants, Investors and all other parties; (ii) notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and (iii) based upon the record herein and after due deliberation and for good cause shown it is hereby

ORDERED THAT:

1. The Motion is granted in all respects.
2. All objections not withdrawn or resolved by this Order are overruled in all respects.
3. Claims Procedures. The following Claims Procedures, are approved:

I. The Receiver's Determination of Claims

A. Approved Claims

i. The Receiver may finalize her determination of whether a Filed Claim is an “*Approved Claim*” by taking into account, among other things, whether (i) the Claim is properly asserted through a timely filed Proof of Claim; (ii) the Claim is properly asserted against a Receivership Entity; (iii) the Claim is not duplicative of any other Claim asserted against a Receivership Entity; (iv) the Claim arises out of any Receivership Entity's activities, agreements, or other obligations; (v) any alleged Claim and Claim amount are consistent with the books and records of the Receivership Entity against which the Claim was asserted; (vi) the Claim is adequately supported by documentation; (vii) the Claim is secured by a lien on property of a Receivership Entity; (viii) the Claim is subject to any offsets or defenses that may be asserted,

¹ Capitalized terms used, but not defined, herein shall have the meaning ascribed in the Memorandum of Law in Support of the Motion.

including with respect to any claimed lien purportedly securing the Claim; or (ix) whether other grounds exist for denying the Claim, in whole or in part.

ii. The Receiver's determination of the allowed amount of each Approved Claim will serve as the basis for calculating a Claimant's distribution of assets of the Receivership Entities in accordance with a plan of distribution, and is not necessarily indicative of the treatment of the Claim under any plan of distribution or the amount of distribution a Claimant may ultimately receive from the Receivership Entities. The Receiver may estimate the amount of a Claim that is contingent, unliquidated, or unmatured for purposes of determining the allowed amount of an Approved Claim.

B. Claims Analysis Report

i. The Receiver will file and serve a notice of claims analysis report (the "*Claims Analysis Report*"). The Claims Analysis Report will be served by first-class mail on holders of Filed Claims, at the address listed on the Proof of Claim for notice, or as updated pursuant to a request by the Claimant or by returned mail from the post office with a forwarding address. In addition to notice by mail, where a Claimant has provided an electronic mail address to the Receiver, the Receiver will serve the Claims Analysis Report on such Claimant via electronic mail. The Receiver will post the Claims Analysis Report on the Receiver's website (<http://www.platinumreceivership.com/>).

ii. The Claims Analysis Report will include a schedule that will set forth the Receiver's determinations with respect to each Filed Claim. The Claims Analysis Report will identify each Filed Claim and state whether the Receiver deems it to be an Approved Claim and in what amount, and whether the Receiver deems the Claim to be secured by a lien on property of a Receivership Entity. Where the Receiver does not recognize that a Claimant holds an Approved

Claim, in whole or in part, the Claims Analysis Report will state that the Receiver does not recognize a Claim for such Claimant and shall indicate the reason(s) for disallowing, in whole or in part, the Claim. For the avoidance of doubt, any party that failed to submit a Filed Claim pursuant to the Bar Date Orders shall not have an Approved Claim, shall not be entitled to receive a distribution under a plan of distribution, and will not have a claim included in the Claims Analysis Report. The Receiver may periodically modify the Claims Analysis Report as necessary.

C. Disputed Claims

i. Any Claimant who disagrees with the Receiver's determination of their Claim as set forth in the Claims Analysis Report may serve on the Receiver any objection they may have to the analysis of their Claim in the Claims Analysis Report (each an "**Objection**"), including any objection to the Receiver's determination of whether the Claim is an Approved Claim, the allowed amount of the Approved Claim, and/or the Receiver's determination of whether the Claim is secured by property of a Receivership Entity. A Claimant may file an Objection on its own behalf or through its counsel of determinations reached with respect to its Claim(s). No other party may file an Objection to the Claims Analysis Report, and Claimants may not object to the Receiver's determinations of other Claimants' Claims. Objections to the Claims Analysis Report shall (i) be in writing, (ii) state the name and address of the objecting party, the name and address of their counsel, if any, the assigned claim number, and the nature of the Claim of such party, (iii) state with particularity the basis and nature of all objections, and (iv) be electronically mailed to the Receiver, at her email address, platinumreceiver@otterbourg.com, so as to be *actually received* not later than 45 days after the Receiver's mailing of the Claims Analysis Report. Upon the timely service of an Objection, a Claim shall become a "**Disputed Claim**".

ii. Objections should not be filed with the Court. A Claimant's failure to timely submit to the Receiver an Objection that complies, in all respects, with the above instructions shall permanently preclude the Claimant's right to object to or contest the Receiver's Claims Analysis Report as it relates to their Claim(s). If a Claimant fails to object to the Receiver's determinations as to their Claim(s) as set forth in the Claims Analysis Report, then the Receiver's determinations set forth in the Claims Analysis Report shall be final and binding. The list of Approved Claims and allowed amounts for such Claims will be used to calculate the distribution that the Claimant may receive pursuant to any approved plan of distribution. The plan of distribution will be subject to separate review by the Court.

II. The Receiver's Verification of Interests

A. Verification of Interests

i. The Receiver will provide notice of the amounts that each Investor invested in the Receivership Entities on account of their Interest, and the amounts received by each Investor from the Receivership Entities on account of their Interest, based upon the books and records of the Receivership Entities. Each Investor, respectively, will be sent an individual statement (an "*Investor Statement*") containing the amounts invested in, and amounts received from, the Receivership Entities for the respective Investor on account of their Interest, as set forth in the Receivership Entities' books and records.

ii. To protect the privacy of Investors, the Investor Statement will assign each Investor an individual investor number unique to that Investor. The respective investor number will be used by the Receiver to identify individual investors in public filings with the Court. The Investor Statement will also contain detailed information about how to dispute the information contained in the Investor Statement, and the deadline by which the Investor must do so.

iii. The Investor Statement will solely advise Investors of the information contained in the Receivership Entities' books and records and to provide Investors with an opportunity to dispute the information contained in the books and records, if necessary. The information reflected in an Investor Statement will not state the priority, if any, of an Interest or the amount an Investor ultimately may receive from the Receivership Entities.

B. Disputed Interests

i. Any Investor who disagrees with the information contained in the Investor Statement regarding their own Interest, may serve on the Receiver any disputes they may have to the accuracy of the information in the Investor Statement as it relates to their own Interest (each an "***Investor Objection***"). The sole basis for an Investor Objection shall be that the books and records of the Receivership Entities are inaccurate. An Investor may file an Investor Objection on its own behalf or through its counsel. No other party may file an Investor Objection to an Investor Statement, and Investors may not file an Investor Objection with respect to other Investors' Interests. Investor Objections shall (i) be in writing, (ii) state the name and address of the objecting party, the name and address of their counsel, if any, and the assigned investor number, (iii) state with particularity all information the Investor believes to be inaccurate in the Investor Statement, (iv) provide documentation evidencing the information that the Investor believes is correct, and (v) be electronically mailed to the Receiver, at her email address, platinumreceiver@otterbourg.com, so as to be *actually received* not later than 45 days after the Receiver's mailing of the respective Investor Statement. Upon the timely service of an Investor Objection, an Interest shall become a "***Disputed Interest***".

ii. Investor Objections should not be filed with the Court. An Investor's failure to timely submit an Investor Objection to the Receiver that complies with the above instructions shall

permanently preclude the Investor's right to object to or contest its respective Investor Statement. If an Investor fails to object to the information set forth in its respective Investor Statement, then the information set forth in the Investor Statement shall be final and binding and shall form the basis for calculating the allowed amount on account of each Interest, based upon the distribution methodology employed in accordance with a plan of distribution.

III. Voluntary Resolution of Disputed Claims and Disputed Interests

A. The Receiver shall make a good-faith attempt to resolve a Disputed Claim or a Disputed Interest with the respective Claimant or Investor. The Receiver may, in her discretion and subject to agreement with the applicable Claimant or Investor, utilize a disinterested mediator to seek to resolve a Disputed Claim or Disputed Interest, without further order of the Court. The reasonable fees and expenses of a mediator shall be shared equally among the Receivership Entities and the Claimant or Investor whose Disputed Claim or Disputed Interest is the subject of the mediation. Without modify any prior agreements entered into by the Receiver or orders entered by this Court unless specifically stated, the Receiver may, in her sole discretion, settle and compromise any Disputed Claim or Disputed Interest on terms and for reasons that she deems, in her business judgment, to be appropriate, and the allowed Claim or Interest, and the respective allowed amount and classification, shall form the basis upon which distributions will be calculated in the Receivership, in accordance with a plan of distribution, without further Order of this Court.

IV. Resolution of Disputed Claims and Disputed Interests by the Court

A. Any Disputed Claim or Disputed Interest that cannot be resolved by agreement between the Receiver and the Claimant or Investor will be adjudicated by the Court in a summary proceeding as follows:

i. With respect to each Disputed Claim or Disputed Interest that is not resolved by agreement, the Receiver may commence a summary proceeding by filing with the Court a “***Motion for Claim Resolution***”, which shall include the following: the respective Claims Analysis Report or Investor Statement², the relevant objection, and declarations or other evidence that the Receiver deems relevant to the Court’s determination of the Disputed Claim or Disputed Interest, including any legal or factual basis for the Receiver’s determination, if appropriate. The Receiver’s Motion for Claim Resolution and supporting brief shall be served on the applicable Claimant or Investor at the time of its filing.

ii. The Receiver may, in her discretion, file one or more omnibus Motions for Claim Resolution to avoid any burden associated with filing individual motions.

iii. In accordance with the Order Adopting Protocols for Parties in Interest to be Heard on Receiver Motions (the “***Protocols Order***”) [[Dkt. No. 271](#)], on or before fourteen (14) days after the filing of a Motion for Claim Resolution by the Receiver (the “***Response Deadline***”), any Claimant or Investor wishing to be heard with respect to a Motion for Claim Resolution (other than parties named in the caption), shall electronically deliver to the Receiver’s email address (platinumreceiver@otterbourg.com), that Claimant or Investor’s response to the Motion for Claim Resolution (collectively, the “***Responses***”); Claimants and Investors (other than parties named in the caption) shall not file Responses on the ECF docket in this action. On or before two (2) days after the Response Deadline, the Receiver shall compile all of the Responses she has received, and shall file the Responses under one docket entry on the ECF docket in this action. The Receiver

² The Receiver will identify the applicable Investor by investor number and will redact the applicable Investor’s personal information from public filings with the Court.

shall have no more than fourteen (14) days following the Response Deadline to file any reply in further support of a Motion for Claim Resolution.

Dated: December 1, 2020
Brooklyn, New York

Digitally signed by Brian M. Cogan

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK