

COURT FILE NUMBER	1101-09473
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	<b>GERRY DUPAS</b>
DEFENDANT	<b>PHILLIP PINCUS, in his capacity as Trustee of the PLATINUM INVESTMENT TRUST and PLATINUM EQUITIES INC.</b>
DOCUMENT	FIRST REPORT TO THE THE COURT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>FRASER MILNER CASGRAIN LLP</b> Fraser Milner Casgrain LLP Bankers Court 15 <sup>th</sup> Floor, 850 - 2 <sup>nd</sup> Street S.W. Calgary, Alberta T2P 0R8 Ph. (403) 268-7097 / 3037 Fax. (403) 268 3100 Attn: David Mann / Matthew Lindsay / Robert Kennedy Email: david.mann@fmc-law.com / matthew.lindsay@fmc-law.com / robert.kennedy@fmc-law.com

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## INTRODUCTION

1. On June 5, 2012, the Court of Queen's Bench of Alberta (the "Court") issued an order (the "Receivership Order") appointing Ernst & Young Inc. ("EY") as the Receiver and Manager (the "Receiver") of Platinum Investment Trust ("PIT").
2. This report is filed by EY in its capacity as Receiver of PIT.

### **Purpose of this Report**

3. The purpose of this report (the "First Report") is to:
  - a) Summarize the activities of the Receiver since its appointment; and
  - b) Respectfully recommend that this Honourable Court make an order:
    - i. Confirming that certain mortgages and loans form part of the Property subject to the Receivership order;
    - ii. Directing the registrar of the South Alberta Land Registration District to register the Receivership Order against the Mortgaged Lands (as defined herein); and
    - iii. Approving the Receiver's actions to date.

### **Terms of Reference**

4. In developing this Report, the Receiver has relied upon unaudited financial information prepared by the Company's management, the Company's books and records and discussions with its management. The Receiver has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future-oriented financial information relied upon in this Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material, and as such the Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Receiver in preparing this Report.

### **Currency**

5. All currency references in this Report are in Canadian dollars.

## BACKGROUND

6. PIT was created in April 2008 pursuant to a Declaration of Trust (the "Declaration"). Platinum Equities Inc. ("Platinum") provided PIT with management services associated with mortgages and related properties.
7. Investors would invest in PIT and in turn, PIT would make debt-based real estate investments on behalf of the trust unitholders in the form of first and second mortgages (the "Mortgages") registered against real property located in Alberta.
8. Gerry Dupas ("Dupas"), was a unitholder in PIT. Both on Dupas' own behalf and on behalf of several other concerned investors, Dupas initiated this action as a result of (i) PIT failing to make the required quarterly distributions pursuant to the subject offering memoranda, and (ii) PIT trustees and administrators failing to provide Dupas, and others, information in relation to their investments.
9. The originating application was filed on July 11, 2011 (the "Originating Application") seeking, among other things, orders and directions from the Court for:
  - (a) the production of information relating to the identity of the trustees of PIT;
  - (b) the production of documents relating to any annual meetings;
  - (c) the particulars of any and all unitholders of PIT;
  - (d) the details of the financial holdings of PIT; and
  - (e) the financial statements of PIT.
10. As set out in the Dupas affidavit filed in support of the Originating Application, Dupas encountered routine difficulty in contacting PIT trustees and administrators to determine the status of his investments, information about the operations of PIT, the nature of the assets under the administration, or the manner in which they had been administered by PIT.
11. The originating application followed a lengthy and protracted history of applications and Court Orders in furtherance of Dupas' requests. A summary of these further Court Orders is set out in the Affidavit of Robert Taylor sworn on May 24, 2012 in support of the Receivership Order which is attached as Exhibit "A" to this Report (the "Taylor Affidavit").
12. On March 1, 2012, EY was initially appointed an inspector (the "Inspector") pursuant to a resolution of the unitholders of PIT (the "Resolution") made under

the Declaration for the general purpose of reviewing the operations and activities of PIT. Further details in this respect can be found in the Taylor Affidavit.

13. PIT did not respond to the Inspector's request for the provision of information and as a result the Inspector was unable to discharge it's duties under the Resolution. EY was then appointed Receiver of PIT.
14. Additional background information on PIT is included in the Taylor Affidavit and the exhibits thereto.

## **PIT LOAN AND PROPERTY INTERESTS**

15. Pursuant to the Receivership Order, the Receiver is in the process of reviewing:
  - (a) the books and records of PIT; and
  - (b) the general business and affairs of PIT.
16. In the course of this investigation, the Receiver has ascertained that PIT holds a loan portfolio (the "Loan Portfolio"). The Loan Portfolio consists of various loans to various parties, and in some cases, these loans are secured against property in the form of Mortgages.
17. The Receiver understands that investor funds were used to fund the Loan Portfolio and may be secured by the Mortgages.
18. The Mortgages and their related loans are currently held in the name of nominees who are affiliated PIT mortgage-holding companies including Platinum, PMIC II Investments Ltd., Accretive Asset Management Corporation and PIT General Partner Corp. We have been advised by the trustee, Shariff Chandran, that the Mortgages were registered in the name of nominees in as much as PIT could not register the Mortgages in its own name.
19. The Mortgages have been registered against various lands which include those properties listed in Exhibit "B" (the "Mortgaged Lands"). Copies of the associated Land Titles Certificate are also attached in Exhibit "B". The Mortgaged Lands are, in some cases, subject to foreclosure proceedings or a sales process.
20. The Receiver has made numerous attempts to obtain information in relation to the Mortgages and the status of any foreclosure or sale proceedings in respect of any of the Mortgaged Lands. To date, the Receiver has not been able to obtain such information although all of the lawyers identified have made initial contact with the Receiver and are reviewing their respective records. Attached as Exhibit "C"

is a copy of correspondence directed to legal counsel that have acted or are acting in relation to the Mortgages.

21. Because the Mortgages have been registered in the names of nominees, third parties (including counsel holding information associated with the Mortgages and related enforcement proceedings) may take the position that the Mortgages are not, or may not be, subject to the Receivership order and may decline or refuse to provide the information requested by the Receiver. In light of this, there is a risk that proceeds from the loans, Mortgages and foreclosures or other enforcement steps will not be preserved and will be paid to third parties and not to the Receiver.
22. The Receiver is of the view that PIT has a legal or beneficial interest in the Mortgages. Accordingly, the Receiver believes it is appropriate in the circumstances to have the listed loans and Mortgages specifically confirmed as part of the Property under receivership and to have the Receivership Order registered against the Mortgaged Lands in order to preserve the secured position of the Mortgages, and allow the Receiver to receive notice of any enforcement proceedings and/or sale transactions in respect of Mortgaged Lands which may affect the position of the Mortgages.

## **ACTIONS OF THE RECEIVER**

23. Since the date of the Receivership Order, the Receiver has carried out the following actions:
  - i. Obtained certain books and records from PIT;
  - ii. Liaising with HSBC and CIBC in respect of PIT's bank accounts;
  - iii. Liaising with Grant Thornton ("GT") to obtain (a) information in respect of GT's work in respect of PIT's books of account and (b) a copy of PIT's server, in accordance with the Receivership Order;
  - iv. Correspondence with lawyers dealing with the Properties as detailed in section 20 above;
  - v. Taking the necessary steps in respect of protecting PIT's position in respect of the Mortgaged Lands;
  - vi. Review of the investor list and responding to investor queries;  
and

vii. Preparation of this report.

## CONCLUSION AND RECOMMENDATION

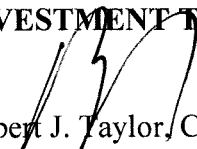
24. The Receiver, therefore, respectfully recommends that this Honourable Court:

- a) confirm that the loans and Mortgages listed in Exhibit "B" form part of the Property under the Receivership Order;
- b) direct the registrar of the South Alberta Land Registration District to register the Receivership Order against the Mortgaged Lands;
- c) approve the Receiver's actions in respect of administering the receivership; and
- d) provide such further and other relief as this Honourable Court may direct.

\* \* \*

All of which is respectfully submitted this 22<sup>nd</sup> day of August, 2012.

**ERNST & YOUNG INC.**  
**IN ITS CAPACITY AS RECEIVER AND MANAGER OF PLATINUM**  
**INVESTMENT TRUST. AND NOT IN ITS PERSONAL CAPACITY**

  
Robert J. Taylor, CA•CIRP  
Senior Vice-President