

CAHILL GORDON & REINDEL LLP
32 OLD SLIP
NEW YORK, NY 10005

DANIEL R. ANDERSON
HELENE R. BANKS
ANIRUDH BANSAL
DAVID L. BARASH
LANDIS C. BEST
BRADLEY J. BONDI
BROCKTON B. BOSSON
JONATHAN BROWNSON *
DONNA M. BRYAN
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JOEL KURTZBERG
TED B. LACEY
MARC R. LASHBROOK
ALIZA R. LEVINE
JOEL H. LEVITIN
GEOFFREY E. LIEBMANN
BRIAN T. MARKLEY

TELEPHONE: (212) 701-3000
WWW.CAHILL.COM

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900

CAHILL GORDON & REINDEL (UK) LLP
20 FENCHURCH STREET
LONDON EC3M 3BY
+44 (0) 20 7920 9800

WRITER'S DIRECT NUMBER

MEGHAN N. McDERMOTT
WILLIAM J. MILLER
EDWARD N. MOSS
NOAH B. NEWITZ
WARREN NEWTON §
DAVID R. OWEN
JOHN PAPACHRISTOS
LUIS R. PENALVER
KIMBERLY PETILLO-DÉCOSSARD
SHEILA C. RAMESH
MICHAEL W. REDDY
OLEG REZZY
THORN ROSENTHAL
TAMMY L. ROY
JONATHAN A. SCHAFFZIN
ANDREW SCHWARTZ
DARREN SILVER
JOSIAH M. SLOTNICK
RICHARD A. STIEGLITZ JR.
ROSS E. STURMAN
SUSANNA M. SUH
ANTHONY K. TAMA

JOHN A. TRIPODORO
GLENN J. WALDRIP, JR.
HERBERT S. WASHER
MICHAEL B. WEISS
DAVID WISHENGRAD
C. ANTHONY WOLFE
COREY WRIGHT
ELIZABETH M. YAHL
JOSHUA M. ZELIG

* ADMITTED AS A SOLICITOR IN ENGLAND AND WALES ONLY
‡ ADMITTED AS A SOLICITOR IN WESTERN AUSTRALIA ONLY
† ADMITTED IN DC ONLY
§ ADMITTED AS AN ATTORNEY IN THE REPUBLIC OF SOUTH AFRICA ONLY

(212) 701-3154

April 28, 2022

Re: SEC v. TCA Fund Management, et al., 1:20-cv-21964-CMA

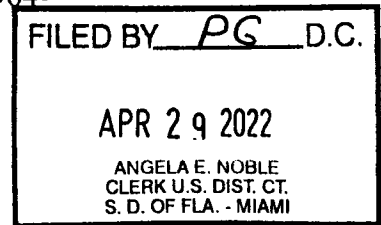
VIA FEDEX

The Honorable Cecilia Altonaga
United States District Judge
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Miami, Florida 33128

Dear Judge Altonaga:

We represent non-party Credit Suisse, certain of whose clients invested in the TCA Global Credit Fund, LTD (the "TCA Fund" or "Fund") via the nominee entity Credit Suisse London Nominees Limited ("CSLN"). In that connection, pursuant to the Court's March 3, 2022 Order (Dkt. 215), we respectfully submit the following comments regarding the Receiver's February 28, 2022 Motion for Approval of the Distribution Plan and First Interim Distribution (the "Receiver's Motion") (Dkt. 208). Because these comments contain financial information involving certain of CSLN's non-party clients, we respectfully request that this letter not be filed on the public docket (we would be pleased to provide a redacted version if the Court prefers). Per the Court's March 3, 2022 Order, we are also providing a copy of this letter to the Receiver directly.

As explained in the Receiver's Motion, the Receiver has sought information from financial institutions such as Credit Suisse whose clients invested in the TCA Fund via nominee entities such as CSLN in order to permit the Receiver to identify underlying beneficial owners ("UBOs"). The Receiver did so to "determine the actual net losses of each actual beneficial



owner who invested through [nominee entities such as CSLN], almost all of whom were previously unidentifiable.” Mot. at 3. Credit Suisse has worked cooperatively with Receiver’s counsel in responding to requests to produce information regarding UBOs that invested through CSLN and their transactions in the Fund to provide the requested information to the extent possible, consistent with the applicable local data protection laws, confidentiality and/or bank secrecy requirements. In certain instances, Credit Suisse did not receive consent from UBOs to provide their information to the Receiver. For other investors, Credit Suisse provided information regarding the identities of the UBOs and their transactions in the TCA Fund.

Upon review of the Receiver’s proposed Distribution Plan (the “Plan”), Credit Suisse observed certain apparent discrepancies in the treatment of disclosed UBOs that invested through CSLN. For instance, of the 29 unique UBOs for which Credit Suisse produced identifying information, ten are not mentioned in the Plan (*see* discussion in Section 2.b, *infra*). A further three are listed in the Plan with annotations indicating their claims have been subordinated, but it is unclear on what basis (*see* discussion in Section 2.a, *infra*). Other CSLN investors are identified in the Plan as “net losers” entitled to distributions, but it is unclear which of those UBOs’ transactions with the TCA Fund were counted or discounted in the distribution calculation, making it difficult or impossible to validate the Receiver’s conclusions (*see* discussion in Section 2.c, *infra*).

Credit Suisse has attempted to understand the treatment of its clients invested through CSLN under the Plan, however, the Receiver’s methodology as outlined in the Plan is difficult to evaluate. Credit Suisse raised certain questions with Receiver’s counsel informally but has not received a response.

Accordingly, Credit Suisse’s primary comments seek further clarity regarding the treatment of the CSLN UBOs under the Plan. Credit Suisse also respectfully submits that it would be appropriate to include a mechanism for omitted, subordinated, or potentially under-compensated UBOs to establish their entitlement to distributions, cure any informational deficiencies that may exist, and to be included in distributions as appropriate (*see* Sections 1 and 2, *infra*).

Additionally, Credit Suisse respectfully submits that the Plan should provide a mechanism to allow interested parties to provide the Receiver with updated information relevant to the Plan (*see* Section 3, *infra*). Credit Suisse also submits that the Plan should specify which entities and UBOs are being referenced with sufficient detail to allow them to be accurately identified. Credit Suisse requests clarification regarding the identity of two entities or UBOs that appear to have a nexus to Credit Suisse or CSLN (*see* Section 4, *infra*). Lastly, in connection with the Plan’s implementation, Credit Suisse requests that CSLN be permitted to coordinate any distributions to UBOs invested through CSLN, in order to (1) reconcile their records and (2) satisfy locally applicable know-your-customer and anti-money laundering requirements.

1. **The Plan should clarify which investors have had their claims subordinated on the basis of insufficient information produced to the Receiver, clarify what type of information would be sufficient to validate their claims, and specify a mechanism to cure any such deficiencies in order to be included in future or “catch-up” distributions.**

Credit Suisse provided the Receiver with certain identifying information regarding consenting UBOs and their transactions in order for the Receiver to validate the claims of those UBOs. The Plan describes three categories of nominee entities as to which the Receiver did not have “complete information. . .which resulted in the subordination of potential net loser distributions[.]” The three categories are (1) nominees that provided no information, (2) nominees that “provided deficient productions that resulted in the Receiver’s professionals being unable to reconcile the identity of the ultimate beneficial owners or their transactions with the Feeder Funds” and nominees that “failed to provide sufficient information as to permit the Receivers’ professionals to reconcile all of the transactions involving their ultimate beneficial owners.” Mot. at 29. The Plan does not specify which nominees fall into which category, and it is unclear whether CSLN is included in any of these categories.

Providing clarification as to which UBOs have been subordinated on the basis of insufficient information would permit these investors to cure any information deficiency and pursue distributions. The Plan currently contemplates this: “The Receiver may consider proposing (at a later date and on a case by case basis), an appropriate catch-up payment to any investor who belatedly provides the Receiver with the information necessary to administer their respective claim on the same basis as other investors.” Mot. at 29. Accordingly, Credit Suisse respectfully submits that the Plan should be modified to (1) specify which UBOs’ claims have been subordinated on the basis of insufficient information, (2) provide further guidance on what additional information is needed for the Receiver to validate claims, and (3) provide a mechanism for affected UBOs to receive distributions upon curing any information deficiency.

2. **The Plan should provide recourse for investors whose claims have been subordinated on unclear bases, who were omitted from the Plan, or whose treatment under the Plan is unclear, to seek clarification regarding their treatment under the Plan. The Plan should provide a mechanism for such UBOs to establish their entitlement to distributions, cure any deficiencies if they exist, and to be included in future distributions as appropriate.**

- a. Investors Whose Claims Were Subordinated on Unclear Bases

The Plan includes this annotation as to three UBOs that invested through CSLN: that they are “Subordinated Net Loser - Unidentified Sub Transfer.”¹ It is not clear whether this

¹ These UBOs are Christophe Heibert Audergon and Lara Patrizia Audergon-Filippi (Mot. Ex. C at 5), Victoria Azarenka (Mot. Ex. C at 21), and Massimo De Marco (Mot. Ex. C at 13).

annotation indicates that these UBOs have been subordinated on the basis stated in Note 2 on page 23 of Receiver's Motion Exhibit C: "The Trades Export includes transfer activity between investors and switch activity between currencies. Yip Associates has reconciled these transfers and switches and eliminated any gains records at the time of each transfer and switch. To the extent that Yip Associates was unable to reconcile the transfers and switches based on the information received to date, the claims have been subordinated." Credit Suisse respectfully submits that the Plan should make clear the basis on which each UBO was subordinated. Credit Suisse also submits that the Plan should include a clear mechanism for such UBOs to seek clarification regarding their treatment under the Plan, and if necessary, to establish their entitlement to distributions, cure any deficiencies if they exist, and to be included in distributions as appropriate.

b. Investors Whose Claims Were Omitted From the Plan

Credit Suisse provided information regarding ten UBOs and their transactions in the TCA Fund that appear to have been entirely omitted from the Plan.² It is unclear whether these UBOs have been subordinated, if some other aspect of the Plan's methodology led to the exclusion of these UBOs, or if an oversight occurred. Credit Suisse respectfully submits that the Plan should be modified to provide a mechanism for such UBOs to seek clarification regarding their treatment under the Plan, and if necessary, to establish their entitlement to distributions, cure any deficiencies if they exist, and to be included in distributions as appropriate.

c. Investors Who Seek General Clarification Regarding Their Treatment

Credit Suisse also respectfully submits that the plan should be modified to provide a mechanism for UBOs who seek general clarification regarding their treatment under the Plan, and if necessary, to establish their entitlement to distributions, cure any deficiencies if they exist, and to be included distributions as appropriate.

For example, Credit Suisse has received a query from CSLN UBO David Ziv, for whom information was produced regarding two subscriptions in the Fund of \$100,000 each, but only one of the subscriptions appears to have been taken into account in formulating the Plan (*see* Mot. Ex. C at 5). Credit Suisse respectfully submits that clarification regarding which of Mr. Ziv's transactions were taken into account in the Plan and how his distribution was calculated would be appropriate.

Similarly, in certain instances Credit Suisse provided information regarding multiple TCA Fund transactions attributable to one UBO, but it is unclear which transactions may have been counted or discounted in the Plan to arrive at the distribution figure. For example, as to

² These UBOs are Schlomo Baleli and Nitzan Reem, Thomas Kink (together with an unidentified UBO), Thomas Kink (as a sole UBO), Yonathan Asher Ehrlich and Ronni Ehrlich Gal, Eli Gabi, Francois Dekker, Jan Klockmann, Michael Gulyansky, Armin and Jeannine Kurz Stiftung, and Armin and Jeannine Kurz Stiftung together with an unidentified UBO.

UBO Jeannine Kurz, for whom Credit Suisse produced detail on multiple transaction in different non-USD currencies, the Receiver's process only yielded a Net Investment Amount in USD, making it difficult to ascertain which transactions were incorporated into the Plan. Credit Suisse respectfully submits that the Plan should be clarified to indicate which transactions related to the TCA Fund were taken into account and how distributions were calculated. Credit Suisse also submits that the Plan should be modified to provide a general mechanism for such UBOs to inquire into their treatment under the Plan, and request modification of their treatment as necessary.

3. The Plan should outline a procedure for interested parties to provide the Receiver with updated information relevant to the Plan.

Credit Suisse respectfully submits that the Plan should provide a mechanism for interested parties to furnish the Receiver with updated information pertinent to the Plan, including information relevant to future distributions under the Plan.

For example, Credit Suisse received updated information regarding a transfer of TCA shares by Nata Ventures Ltd to Toledo Capital AG on July 26, 2021. Below are details about the internal transfer:

- Transferor: Nata Ventures Ltd.
- Transferee: Toledo Capital AG
- Date of Transfer: July 26, 2021
- Number of shares transferred: 419.443 shares in valor 14191462 and 51.827 shares in valor 14191521.

In the Plan, it appears that Nata Ventures Ltd. is included among "Net Losers" (*see* Mot. Ex. C at 5), but Toledo Capital AG is not reflected in the Plan. While Credit Suisse has advised the Receiver of this particular transfer (via email to Receiver's counsel dated April 19, 2022), Credit Suisse submits that the Plan should outline a procedure for submitting information relevant to the Plan going forward.

4. The Plan should specify which entities and UBOs are being referenced in the Plan with sufficient detail to allow them to be accurately identified.

The Plan refers to certain entities or UBOs that may have a nexus with Credit Suisse or CSLN, but does not provide sufficient detail to identify them with certainty.

First, in Exhibit B of the Plan representing a "Draft Schedule of Net Winners," the first page of the Exhibit lists a Net Investment Amount of \$4,393,799.53 corresponding to "I-1324 Undisclosed UBO - Credit Suisse London Nominees Ltd." Credit Suisse respectfully requests clarification regarding which UBOs or transactions are incorporated in this entry.

CAHILL GORDON & REINDEL LLP

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Second, in Exhibit E of the Plan representing a "Schedule of Unpaid Redemptions," the second page of the Exhibit lists "CREDIT SUISSE." Credit Suisse requests clarification regarding which Credit Suisse entity is referred to in this entry.

5. **The Plan should allow nominee entities to coordinate any distributions to UBOs invested through the nominee entity, in order for the nominee entities to (1) reconcile their records and (2) satisfy locally applicable know-your-customer / anti-money laundering requirements.**

The Plan does not currently specify a process by which distributions will be made to UBOs. Credit Suisse respectfully submits that distributions to CSLN clients be coordinated through Credit Suisse for two primary reasons. First, given that UBOs have invested via the CSLN entity, it is necessary for the CSLN entity's recordkeeping that it reconciles all distributions and transactions in its records. Second, in order to satisfy applicable know-your-customer and anti-money laundering legal requirements, distribution proceeds should be returned to the account from which the monies used to subscribe to the TCA Fund originated.

Credit Suisse appreciates the opportunity to submit these comments on the Plan and appreciates the consideration provided by the Court and the Receiver.

Respectfully submitted,



Jason Hall
Cahill Gordon & Reindel LLP
32 Old Slip
New York, New York 10005
Telephone: (212) 701-3154
jhall@cahill.com

VIA EMAIL AND FEDEX

Cc:

Elizabeth McIntosh
emcintosh@gjb-law.com
Genovese Joblove & Battista, P.A.
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131

ORIGIN ID: SKYA (212) 701-3000
DAVID BAILEY
CAHILL GORDON & REINDEL LLP
32 OLD SLIP
17TH FLOOR
NEW YORK, NY 10005
UNITED STATES US

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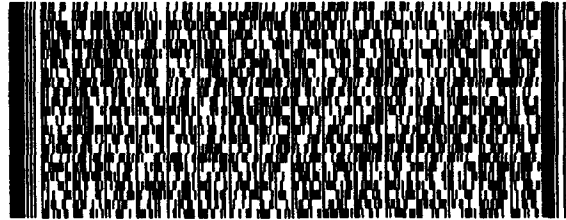
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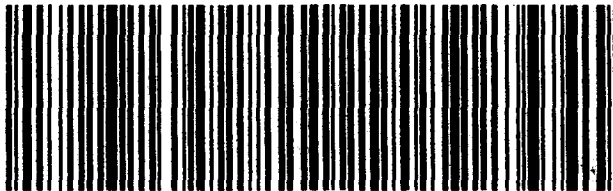
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