

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-21964-CIV-ALTONAGA

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**TCA FUND MANAGEMENT
GROUP CORP, et al.,**

Defendants.

ORDER

THIS CAUSE came before the Court *sua sponte*. On February 28, 2022, Receiver Jonathan E. Perlman filed his Motion for Approval of Distribution Plan and First Interim Distribution [ECF No. 208]. The Court then issued a March 3, 2022 Order [ECF No. 215] setting an April 29, 2022 deadline for those wishing to file responses or objections to the Receiver's Proposed Distribution Plan. (*See id.* 2). Over the next 60 days, Caesarea Medical Electronics Holding (2000) Ltd. [ECF No. 228]; Xstream Travel, Inc. and David Manning [ECF No. 237]; Clearstream Banking, S.A. [ECF No. 238]; the Joint Official Liquidators of TCA Global Credit Fund, Ltd., Eleanor Fisher and Tammy Fu [ECF No. 240]; AW Exports Pty Ltd., Warwick Broxom, and Jonathan James Kaufman [ECF No. 242]; Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth [ECF No. 243]; and Credit Suisse [ECF No. 244]; all submitted Responses, raising disagreements with various aspects of the Proposed Distribution Plan. The Receiver filed a Reply [ECF No. 263] on June 9, 2022.

Before ruling on the Receiver's Motion, the Court notes that the objectors' right to due process contemplates "fair" procedures and "an opportunity to be heard." *SEC v. Elliott*, 953 F.2d

1560, 1566 (11th Cir. 1992) (collecting cases). To afford objectors a full opportunity to voice their opposition, the Court will hold a hearing on the Receiver’s Motion, at which time the objectors may advance arguments they have against the Proposed Distribution Plan.

Further, where an objection to a proposed distribution plan gives rise to a factual dispute, due process requires that courts hold an evidentiary hearing, where the objectors may “present evidence” and make “arguments regarding [disputed] facts.” *Id.* at 1567 (alteration added). Here, Clearstream and Credit Suisse’s responses to the Receiver’s Motion may give rise to factual disputes. The Motion suggests these institutions were insufficiently responsive to the Receiver’s requests for information, rendering it impossible to verify their clients’ transactions with the Receivership Entities. (*See* Mot. 28–31). The Proposed Distribution Plan thus subordinates some of their clients. (*See id.*). Both institutions have objected to their clients’ subordination. (*See generally* Clearstream Resp.; Credit Suisse Resp.).

In the Reply, the Receiver “agrees to continue to cure investors’ subordinated status on a case by case” basis. (Reply 21). According to the Receiver, these objections are thus “resolved[.]” (*Id.* 3) (alteration added). If this amendment indeed satisfies Clearstream and Credit Suisse’s objections, it moots any factual disputes concerning the information they gave the Receiver. If not, Clearstream and Credit Suisse may so advise the Court. Accordingly, it is


ORDERED that:

(1) a hearing is scheduled on Monday, **July 11, 2022** at 9:00 a.m. to: (A) hear arguments on the Receiver’s Motion for Approval of Distribution Plan and First Interim Distribution [ECF No. 208]; (B) hear arguments on objections that have been timely filed; and (C) allow Clearstream, Credit Suisse, and the Receiver to present evidence and call witnesses with respect to factual disputes, if any remain; and

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(2) Clearstream and Credit Suisse shall submit notices by **June 21, 2022** advising whether:
(A) the Receiver's decision to make investors' subordinated status curable on a case-by-case basis has resolved their objections; and (B) if not, whether there is any *factual* dispute as the sufficiency of the information the institutions have provided the Receiver.

DONE AND ORDERED in Miami, Florida, this 14th day of June, 2022.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record