UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP, CORP. and
TCA GLOBAL CREDIT FUND, LTD.,

Defendants, and

TCA GLOBAL CREDIT FUND, LP; TCA GLOBAL
CREDIT FUND, LTD.; TCA GLOBAL CREDIT
MASTER FUND, LP,

Defendants.
______________________________________/

FOREIGN REPRESENTATIVES' SUR-REPLY MEMORANDUM
IN OPPOSITION TO DISTRIBUTION MOTION [ECF NO. 208]

Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives (the "Foreign Representatives") of Relief Defendant TCA Global Credit Fund, Ltd. ("Feeder Fund Ltd."), as recognized by Order of this Court (the "Recognition Order") in the Chapter 15 case of Feeder Fund Ltd. (the "Chapter 15 Case") dated June 4, 2021 [Chapter 15 Case, ECF No. 8], by and through undersigned counsel and pursuant to S.D. Fla. L.R.7.1(c) and this Court's Order entered June 13, 2022 [ECF No 266], hereby file their Sur-Reply Memorandum in respect of the *Motion for Approval of Distribution Plan and First Interim Distribution* filed by the Receiver [ECF No. 208] (the "Distribution Motion"), and respectfully call the Court's attention to the following facts of record and substantial matters of law.

I. Introduction

This Sur-Reply is directed to the Reply Memoranda filed by the SEC [ECF No. 261] (the "SEC Reply") and the Receiver [ECF No. 263] (the "Receiver's Reply" and, together with the SEC Reply, the "Replies"), neither of which truly addresses the fundamental bases of the position set forth in the Foreign Representatives' Response [ECF No. 240] (the "FR Response") in opposition to the Distribution Motion. Instead, the SEC and Receiver ignore or misstate applicable principles and supporting case law, confuse or conflate legal issues, and incredibly invite the Court to hold that it would be manifestly contrary to US public policy to give effect to the sovereign law of a foreign nation that establishes a scheme of distribution priorities for a foreign company in liquidation.

Initially, the Court should reject the efforts of the SEC and Receiver to denigrate the role or motives of the Foreign Representatives who, like the Receiver himself, were appointed by the widely respected court of a sovereign nation, serve as fiduciaries for a portion of the same creditor and investor constituency,[1] and are accountable to the appointing court to follow and apply the laws of that court's jurisdiction. Under Cayman law, the rights of creditors and contributories to Feeder Fund Ltd. are well-defined by statute; under U.S. law, this case presents the issue of first impression[2] whether, on the basis of "equity" and federal common law, a federal equity receiver can request a court – over the objection of the foreign fiduciaries – to approve a distribution scheme that would sweep away and supplant the foreign law under which the subject company was organized, operated, governed and regulated, and thereby defeat the expectations of investors

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[1] In the case of the Foreign Representatives, that fiduciary role is limited to stakeholders in Feeder Fund Ltd.

[2] This issue is also one of great importance to the cross-border insolvency and international investment community.

located overwhelmingly outside the US whose subscription agreements with the Fund are expressly governed by that same foreign law.

Nor should the Court be swayed by fact that the Receiver was appointed a day or two before the Foreign Representatives were appointed as Joint Official Liquidators ("JOLs") in the Cayman liquidation proceeding that was filed prior to this SEC action, nor certainly by the Receiver's resurrection of his abandoned argument that "the JOLs' appointment violated this Court's order appointing the Receiver." Receiver's Reply at p. 6. First, in advancing this argument the Receiver overlooks his own Motion[3] [ECF 145] (the "Amendment Motion"), filed with a certification of no opposition by the SEC, to "amend the Appointment Order [specifically, the injunction provisions of that Order] in connection with the filing of the Chapter 15 Petition consistent herewith and the Agreed Recognition Order, as a means for this Court to address the overlapping issues in the Chapter 15 Petition and this Receivership Action as set forth in the Agreed Recognition Order" and "provide for the consistent and efficient determination of the issues overlapping the Chapter 15 Petition and the Receivership Action." Amendment Motion at pp. 13, 15, 17. That Motion was granted by Order dated June 10, 2021 [ECF 149], to accommodate the relief granted in the Agreed Recognition Order and limit the Injunction provision of the Appointment Order accordingly.

Second, neither the fact nor the timing of the consent to appointment of the Receiver [SEC Reply at p. 2] in the Notice of Settlement [ECF No. 6] granted by Feeder Fund Ltd.'s former management – a concession doubtless made under pressure of the SEC investigation by the alleged bad actors whose conduct necessitated the filing of this enforcement action in the first place – should have the slightest effect on the applicability of Cayman law to an entity organized and

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[3] *Receiver's Motion to Amend the Appointment Order [ECF Co. 5] in Connection with the Filing of the Chapter 15 Petition for TCA Global Credit Fund, Ltd.*

regulated by that law. Even had those former managers been on the up-and-up, it defies any logic and reason to suggest that they can unilaterally waive the governing laws under which the company was organized, operated and regulated, and the protections afforded to stakeholders of that company under those laws.

II. The Replies Wholly Ignore the Fundamental Principle that "Equity Must Follow the Law," and Fail to Persuade that this Case Involves such a "Uniquely Federal Interest" as to be Governed by Federal Common Law

Wholly ignoring literally hundreds of years of Anglo-American jurisprudence, neither the SEC nor Receiver manage in their combined 28 pages of Replies to address the first two arguments raised in the FR Response—that equity must follow the law, and that a U.S. court is not free to ignore the statutory law of a foreign country simply because it may be different from our own.

A. Equity Must Follow the Law, Not Override It.

Neither of the Replies devotes even a single sentence to the long-established principle offered by the Foreign Representatives that "equity must follow the law." FR Response at pp. 4-5. Wholly ignoring this foundational principle of American jurisprudence, the Receiver in particular seeks to redirect the Court away from the issue of first impression presented by the Foreign Representatives. Rather than "follow the law" of the Cayman Islands that undoubtedly governs distributions to stakeholders in a liquidation of the Feeder Fund Ltd. by statute and its relationship with its investors by contract, the Receiver attempts to redirect the Court toward a discussion of what the equities of the case are or should be – not one of what law should apply. Both Replies also conveniently ignore the long-established principle advanced by the Foreign Representatives that "If a foreign statute gives the right, the mere fact that we do not give a like

right is no reason for refusing to help . . . ." FR Response at p. 11 (citing *Loucks v. Standard Oil Co*., 120 N.E. 198, 201 (N.Y. 1918) (Cardozo, C.J.)).

Sidestepping these principles of American jurisprudence, the Replies ignore Cayman jurisprudence as well, failing entirely to address the *Primeo* case [FR Response at p. 3] rejecting an effort by Cayman liquidators to invoke principles of equity to make a distribution in derogation of controlling Cayman statutory law.[4] Instead, the Receiver offers a legally and factually unsupportable, back-door argument about "reciprocity" as a component of comity – that the Grand Court of the Cayman Islands would refuse to recognize the Receiver in this case. Receiver's Reply at pp. 5-6. This argument is absolutely and categorically wrong, and fails for at least two reasons.

First, while the principles of comity are hard-wired into Chapter 15 of the Bankruptcy Code[5] and survive the curtailment of federal common law as a rule of decision,[6] the concept of reciprocity appears nowhere in Chapter 15 nor in any case interpreting it. The omission of any mention of reciprocity in Chapter 15 is both clear and deliberate. As explained in the legislative history to Chapter 15:

> Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law.[7] *It was rejected by overwhelming consensus each time. The United States was one of the leading countries opposing the inclusion of a reciprocity requirement.*

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4 As the Privy Council noted in rejecting that effort, "the tree must lie where it falls." *Pearson v Primeo Fund* [2017] UKPC 19. The 2017 *Primeo Fund* decision is attached as Ex. D [ECF No. 241-4] to the Pearson Declaration [ECF No. 241].

5 *See Ad Hoc Group of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1043-44 (5th Cir. 2012) ("Central to Chapter 15 is comity . . . Within the context of Chapter 15 . . . it is raised to a principal objective.") (citing sections 1501(a), 1508, 1507 and 1509(b)(3)) (stating in mandatory terms that US courts "*shall* grant comity or cooperation to the foreign representative" of a foreign proceeding) (emphasis added).

6 *See*, *infra*, footnote 10.

7 This reference is to the UNCITRAL Model Law on Cross-Border Insolvency, which was adopted by Congress as Chapter 15 of the Bankruptcy Code, 11 U.S.C. §1501 *et seq*.

H.R. REP. NO. 109-31, pt. 1, at 113 (2005) (emphasis added). Accordingly, the series of cases offered by the Receiver [FR Reply at p. 5] under former section 304 of the Bankruptcy Code that was *repealed upon the enactment of Chapter 15* are wholly irrelevant on the falsely-injected issue of reciprocity.

Second, the Receiver misleadingly overlooks the easy fix that has been adopted in countless other cases since the *Stutts* case in 1993 in which the SEC and Receiver seek to cooperate with Cayman liquidators as required under 1525(a) and arrange for the appointment of the Receiver as a joint liquidator along with a Cayman-resident insolvency practitioner in compliance with Cayman law.[8] The SEC and Receiver both are well aware of *SEC v. Direct Lending Investments, LLC*, Case No. 2:10-cv-02188 (C.D. Cal. Nov. 20, 2020), probably the most recent of those cases, as one of the Receiver's financial advisors in this case was himself the receiver in that case. Nevertheless, as loudly confirmed by the Replies, the obvious intent is to defy that obligation to cooperate, and instead run the JOLs and Cayman law over with a freight train called "equity" that makes no effort to stay on the tracks and "follow the law."

The focus on equity and fairness in the Replies (Receiver's Reply at pp. 12-16, SEC Reply at pp. 5-10) is similarly misplaced and deceptively narrow. As its formation documents (attached to the Pearson Declaration as Ex. A) make clear, Feeder Fund Ltd. was specifically created for non-US persons and tax-exempt US persons, the former of which constitute over 90% of its

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[8] *See*, *e.g.*, *In the Matter of Direct Lending Income Feeder Fund Ltd (In Official Liquidation)*, FSD 108 of 2019 (NSJ) (SEC receiver Bradley Sharp of California appointed as JOL with Cayman practitioner); *In the Matter of Cash4Titles* www.sec.gov/divisions/enforce/claims/cash4.htm (SEC receiver Phillip Stenger of Michigan appointed as JOL with Cayman practitioner). The 30-year-old *Stutts* case cited by the Receiver [Receiver Reply at p. 6] at a time when Cayman Islands insolvency law was far less developed has clearly given way to a simple and well-established practice of joining with Cayman insolvency practitioner as joint liquidator in the Cayman proceeding.

investors of record (i.e., registered holders of shares). [FR Response at p. 16 n.21.] In what sense is it fair or equitable to apply US principles of equity and federal common law like bolts out of the blue to those non-US investors, each of whom invested in a Cayman Islands feeder fund and, in so doing, executed a subscription agreement that contained a choice of law clause selecting Cayman Islands law to govern their relationship with that entity?

B. The Replies Offer No "Uniquely Federal Interest" to Justify the Application of Federal Common Law to the Distribution Scheme for a Foreign Company in Liquidation.

The Receiver also misstates the significance of the Supreme Court's decision in *Rodriguez v. FDIC*, 140 S. Ct. 713 (2020), suggesting that the Foreign Representatives rely far too heavily on a "six-page decision" arising from different facts as a basis to "erase . . . all federal common law". Receiver's Reply at p. 6. This is a gross distortion of the Foreign Representatives' position.[9] To be clear, it is the position of the Foreign Representatives that reliance on federal common law *as a rule of decision* is abrogated based not on *Rodriguez* standing alone, but on the entire series of Supreme Court decisions from at least the last 25 years narrowing the application of federal common law that culminated in *Rodriguez*. FR Response at pp. 13-17. For this purpose, the Supreme Court defines "federal common law" as "a rule of decision that amounts, not simply to an interpretation of a federal statute or properly promulgated administrative rule, but, rather, to the judicial 'creation' of a special federal rule of decision." *Atherton v. FDIC*, 519 U.S. 213, 218 (1997).

[9] Nowhere in their Response do the Foreign Representatives challenge SEC or other federal equity receiverships generally, the appointment of this Receiver nor any other federal equity receiver, nor the administration of the receivership in this case. The Foreign Representatives' challenge is directed solely to the distribution scheme proposed in the Distribution Motion—specifically to the application of the judicially created "rising tide" method in derogation of Cayman Islands law.

The application of a special federal rule of decision to govern the distribution scheme is precisely what the Receiver seeks in the Distribution Motion. Only the SEC offers any reference to a federal statute at all [SEC Reply at p. 6], and 15 U.S.C. §78u(d)(5) is merely "related" to but does not establish any distribution for SEC receiverships. As noted in *Atherton*, "[n]or does the existence of related federal statutes automatically show that Congress intended courts to create federal common-law rules." 519 U.S. at 218. Moreover, 15 U.S.C. §78u(d)(5) has nothing whatsoever to do with distributions to stakeholders in an entity placed in federal equity receivership.

To be sure, there are "few and restricted" instances where the judiciary may construct or apply a "federal rule of decision," *Atherton*, 519 U.S. at 218, but as *Rodriguez* makes clear that in those instances there must be a "uniquely federal interest."[10] No such federal interest supports the imposition of US principles of equity in respect of a foreign entity caught as a relief defendant in the web of a federal equity receivership – particularly where, as here, over 90% of the investors of record are non-US persons or entities who agreed in their subscription documents to a Cayman choice of law provision. Indeed, the only federal interest advanced in favor of the distribution

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[10] To the extent the Court may even regard comity as a common-law principle notwithstanding its express inclusion into Chapter 15, *see*, *supra*, footnote 5 (citing 11 U.S.C. § 1509(b)(3)), comity is one of the "few and restricted" instances of permitted federal common law. *Atherton* expressly acknowledged that creating federal common law can be appropriate for matters concerning "relationships with other countries." 519 U.S. 213, 26 (1997) (citing *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425-26 (1964) (fashioning federal common-law Act of State doctrine limiting the authority of U.S. courts to determine the validity of the public acts of a foreign sovereign). Similarly, *In re Treco*, 240 F.3d 148 (2d Cir. 2001), a case relied upon by the Receiver, makes clear that prior to the enactment of former section 304 of the Bankruptcy Code and its repeal and replacement by Chapter 15, courts routinely approved of and applied comity as one of the few and restricted instances of permitted federal common law. *Id.* at 158 n.8. ("The Second Circuit has decided a number of cases involving foreign bankruptcy proceedings based on principles of comity as developed by federal common law.") (citing cases).

scheme is a generic interest in investor protection and fairness, an interest that is far weaker than present in the "few and restricted' instances" in which the Supreme Court has permitted federal common lawmaking.[11]

III. The Replies Misread or Ignore Entirely the Spate of Cases in which Courts and the SEC Itself Have Recognized that Distributions to Stakeholders by a Foreign Entity in Liquidation Are Governed by Foreign Law

Tellingly, with one minor and misleading exception the Replies ignore the multiple cases offered by the Foreign Representatives as evidence of the more enlightened view adopted by the SEC of permitting distribution to stakeholders in foreign entities to be made in accordance with principles and priorities of applicable foreign law. *See* FR Response at pp. 21-23 (citing *Direct Lending*; *SEC v. Founding Partners Stable-Value Fund, LP et al.*, Case No. 2:09-cv-229-JES-NPM (M.D. Fla. Jan. 4, 2022); *In re Income Collecting 1-3 Months T-Bills Mutual Fund*, Chapter 15 Case No. 21-11601(DSJ) (Bankr. S.D.N.Y. Feb. 17, 2022)). There is no meaningful distinction to be drawn between those cases and the situation presented here, save for the intransigence of the Receiver – and especially the SEC – to flex their muscles in the name of "equity" in outright defiance of the foreign law that governs the distribution to stakeholders in a liquidation of Feeder Fund Ltd.

The Receiver only addresses a single one of the cases posited by the Foreign Representatives – ironically the decided case that is most clearly on point and persuasive here. Yet

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11 *See Atherton*, 519 U.S. at 225 (citing cases and examples of the few and restricted instances where federal common law is permitted include). The facts in this case confirm the relatively weak federal interest in this case. The Feeder Fund Ltd. is organized under Cayman law, over 90% of investors of record are non-US persons or entities, and the investors sought out a Cayman investment vehicle and agreed to Cayman law. It also bears mention in this context that Feeder Fund Ltd is not alleged to have violated any US securities laws, but named only as a relief defendant based on the "consent" of its former managers who are accused of multiple violations of those laws.

rather than address the structural point so clearly noted by Judge Bernstein in *In re Ascot Fund Ltd.*, 603 B.R. 271, 284 (Bankr. S.D.N.Y. 2019) – the erroneous conflation of two separate distributions, the first from the master fund to the offshore feeder fund and the second from the feeder fund to its investors, the Receiver offers only the irrelevant assertion of a meaningless foreign main/foreign nonmain distinction that is eliminated by the terms of the Agreed Recognition Order.[12] Receiver's Reply at p. 17. That distinction has no bearing whatsoever on Judge Bernstein's perceptive and well-reasoned decision noting that the second distribution by the Cayman feeder fund to its stakeholders is governed by Cayman law. *Ascot* is eminently correct on this point of law, and together with the other cases cited by the Foreign Representatives and ignored by both the SEC and Receiver stands starkly for the proposition that the effort in this Receivership Case to sledgehammer the sovereign laws of a foreign nation based on principles of equity is selective and fatally flawed.

IV. The Replies Misrepresent and Conflate the Foreign Representatives' Opposition to the Distribution Motion as a Request for Further Relief and Additional Assistance in the Chapter 15 Case, and Ask the Court To Expand and Misapply the Sharply Circumscribed Public Policy Exception to a Situation in Which it is Wholly Inapplicable

The Receiver's Response misrepresents the Foreign Representatives' objection to the proposed distribution scheme in the Receivership Case as a request for further relief and/or additional assistance in the Chapter 15 case under sections 1521 & 1507 [Receiver's Reply at pp.

[12] FR Response at n.7 ("nothing contained in the Stipulated Motion, *nor in the grant of foreign nonmain recognition as provided in this Order* . . . (iii) shall in any way diminish, impair or give greater weight to any of the arguments to be made by the JOLs or the Receiver in respect of the Court's consideration of any matter brought before the Court, whether those arguments are based on the laws and regulations of the United States and/or the Cayman Islands or principles of international comity; or (iv) shall in any way enlarge or improve the entitlement or argument for relief of either the JOLs or the Receiver in respect of the Court's consideration of any matter based on the grant of foreign nonmain recognition rather than foreign main recognition.") citing Recognition Order at para. 12 (emphasis added).

8-11], and then erroneously invokes the narrow and wholly inapplicable public policy provision of section 1506 to shoot down its own strawman argument. *Id.* at 11-12. *See also* SEC Reply at pp. 8-10 (raising section 1506 public policy issue). None of these provisions of Chapter 15 have any relevance whatsoever to the issue of whether the distribution scheme proposed in this Receivership Case impermissibly does violence to applicable principles of Cayman Islands law in the name of equity, which as stated "must follow the law."

The language of section 1506 bears repeating in its entirety here: " Nothing in this chapter prevents the court from refusing to take *an action governed by this chapter* if the action would be manifestly contrary to the public policy of the United States." 11 U.S.C. §1506 (emphasis added).

The "actions governed by" Chapter 15 of the Code include the grant of recognition, relief and additional assistance to a foreign representative under sections 1517, 1521 and 1507 of the Code, respectively. Having already obtained recognition in the Recognition Order, *the Foreign Representatives seek no further relief or assistance in the Chapter 15 case*;[13] instead, as is clear from the docket entries beginning with and relating to the Distribution Motion, *they interpose an objection to the distribution scheme proposed in this Receivership Case*. Accordingly, by its own plain language section 1506 is wholly inapplicable to the present circumstances.

The SEC Reply pays lip service to the extensive case law noting that the public policy exception of section 1506 is to be applied narrowly and sparingly to the most extreme and egregious situations that, as its plain language confirms, are "manifestly contrary" to US public policy (SEC Reply at p. 8), a point the Receiver entirely overlooks. To be clear on the rigorous standard for application of section 1506, "The narrow public policy exception contained in §1506

[13] Any such request for further relief or additional assistance would have to be presented by application or motion in the Chapter 15 case, which has been consolidated with the Receivership Case; the Foreign Representatives have filed no such motion or application.

'is intended to be invoked only under exceptional circumstances concerning matters of fundamental importance for the United States.'" *Vitro*, 701 F.3d at 1069 (citing *In re Ran*, 607 F.3d 1017, 1021 (5th Cir. 2010)).

In *Vitro,* the Fifth Circuit affirmed the bankruptcy court's decision on other grounds, without reaching the 1506 question. The truly narrow limits of this exception are perhaps best illustrated by its rejection in a circumstance involving a Canadian case in which tort claimants lacked the fundamental right under US law to a trial of their personal injury and wrongful death claims by jury. As the Fifth Circuit noted approvingly in *Vitro*, "even the absence of certain procedural or constitutional rights will not itself be a bar under §1506." *Id.* (citing *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) ("Federal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign.")).

The application of section 1506 to the current circumstances is by far the most fatally flawed argument presented in either of the Replies, and defies logic as well as law. Can the SEC or Receiver seriously contend that it would be "manifestly contrary to the public policy of United States" for this Court to recognize and apply the sovereign laws of the foreign nation under which Feeder Fund Ltd. was organized, operated, governed, and regulated (by the Cayman Islands Monetary Authority, *not the SEC*) throughout the course of its existence, up to the time it was placed in receivership in this Court and liquidation in the Cayman Court, and which laws expressly were chosen by contract to govern that Fund's relationship with the very investors for whose benefit the Receiver offers the distribution plan? Is that in any reasonable sense the type of "exceptional circumstance" to which section 1506 was intended to apply? For good and obvious

reasons, none of the reported decisions under section 1506 dictate, much less countenance, that absurd result.

Indeed, precisely the opposite is true. From a policy perspective, the interests lie strongly in favor of applying Cayman Islands law rather than subjective principles of equity and US federal common law to the distribution to stakeholders in Feeder Fund Ltd. Respectfully, it should not be the policy of the SEC – nor certainly of a US court exercising jurisdiction over a federal equity receivership – to upend the legitimate expectations of creditors and investors[14] by sweeping in with the heavy hand of "equity" to cast aside applicable statutory requirements of foreign law. To do so in this case would interfere unjustifiably with and pose an ongoing threat to the international stream of commerce and investment in non-US entities by injecting the uncertain and inconsistent application of subjective notions of fairness and equity under US law.

V. CONCLUSION

The Foreign Representatives fully understand that US courts tend to afford great weight to the discretion and judgment of the SEC and federal equity receivers, who routinely invoke principles of equity and cases decided under federal common law to attain their identified

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[14] The Receiver assumes far too much in his bold assertion that his proposed distribution plan has been "accept[ed]" by "99% of the stakeholders" [ECF No. 263 at p. 2]. Unlike a Chapter 11 case or scheme of arrangement under foreign law there have been no creditor or investor ballots voting to accept or reject his proposed distribution plan – nothing to create a basis for the Court to draw that inference of support or acceptance, indeed nothing more than record holders disclosing information about their beneficial holders under penalty of the subordination of which Credit Suisse complains in its Response. [ECF No. 244]. Moreover, as the Foreign Representatives' Response and this Sur-Reply are offered on behalf of Feeder Fund Ltd., acting for the benefit of its stakeholders to assert the principles of Cayman law, the Court could infer just as easily that many of those stakeholders have relied on the JOLs to address their collective concerns, as opposed to each aggrieved stakeholder filing its own response. Given the uncertainty over this issue, the Foreign Representatives respectfully suggest that the best course is for the Court to reject the Receiver's bold assumption and draw no inference in either direction – simply decide the important issue of first impression presented by the Foreign Representatives in their submissions.

objectives in respect of a federal equity receivership involving purely domestic entities. Here, however, *unlike in any other reported case in which a distribution scheme based on those equitable and common law principles has been approved*, the SEC opted here to extend the reach of the receivership to cover an offshore entity created, operated, governed, and regulated under the sovereign laws of a foreign jurisdiction. The Foreign Representatives do not attack that decision by the SEC, nor certainly the Court's Appointment Order, but simply posit that the circumstances that arise directly from the inclusion of the Cayman Islands Feeder Fund Ltd. as a "relief defendant" in this case do not submit readily to the framework proposed by the Receiver in the Distribution Motion, but instead require application of the established legal principles described above.

Given the importance of the issues presented by the Foreign Representatives, the attention this case already has garnered and is likely to continue to attract within the cross-border insolvency community,[15] and the cooperation contemplated between foreign courts and fiduciaries in Chapter 15,[16] the Foreign Representatives again respectively call upon this Court to invoke the Guidelines and Modalities developed by the Judicial Insolvency Network that includes both the Grand Court of the Cayman Islands and the Bankruptcy Court for this District [FR Response at p. 24], and communicate with the Judge of the Cayman Court assigned to the Cayman liquidation proceeding

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[15] Ben Clarke, *Cayman liquidators tee up first-of-its-kind clash with US receiver*, Global Restructuring Review, Jun. 15 2022, *available at* https://globalrestructuringreview.com/article/cayman-liquidators-tee-first-of-its-kind-clash-us-receiver?utm_source=Cayman%2Bliquidators%2Btee%2Bup%2Bfirst-of-its-kind%2Bclash%2Bwith%2BUS%2Breceiver&utm_medium=email&utm_campaign=GRR%2BAlerts.

[16] *See*, *e.g.*, 11 U.S.C. § 1525(b) (referencing direct court-to-court communication); *id.* § 1527 (authorizing implementation of cooperation under §§ 1525 and 1526 "by any appropriate means").

on the far-reaching legal and financial implications of what will be a landmark decision on these issues.

Dated: June 20, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court in the above-captioned matter using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

By: /s/ *Mark D. Bloom*