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JUN 22 2022

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District Court South Florida
Att. Clerk's office
400 North Miami Avenue
33128 Miami (Florida)
UNITED STATES OF AMERICA

Bussum, The Netherlands, 8th June 2022

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

Dear Judge Altonaga,

This letter contains a comment concerning the Receiver's Motion for Approval of Distribution Plan and First Interim Distribution (hereinafter referred to as "the Motion") in the abovementioned case, in particular the proposed "rising tide" method for calculating the pro rata distribution. I had already submitted my comment with the Receiver before 29 April 2022 and was under the impression that it would be forwarded to the District Court, but when I contacted the Receiver's office I found out that this was not the case and I was advised to send my comment to the District Court separately, which I do in this letter. I would be grateful if the District Court takes my comment consideration when adjudicating the Receiver's Motion.

In the Motion (pages 18-20) the Receiver describes 4 methods of distribution: (1) distribution based on gross investments, ignoring distributions the investors already received; (2) pro rata distribution after investors are demanded to repay prior distributions; (3) distribution according to the rising tide method and (4) distribution according to the net loss or net investment method. The first 2 alternatives are justly discarded as unequitable and unenforceable respectively, thus limiting the choice to the rising tide and the net investment method. How these methods work is explained by means of an example involving 3 investors.

The rising tide method and the net investment method differ in the way prior distributions / withdrawals are taken into account. Under the rising tide method prior withdrawals are considered part of the final distribution, whereas under the net investment method prior distributions are simply regarded as negative investments. Given the nature of the TCA Global Master Fund as being an open ended fund with free entrance and exit of investors and the possibility for investors to freely expand or reduce their participation (subject only to administrative rules and procedures), it appears inconsistent and unfair to treat prior withdrawals as anything other than just negative investments (as the net investment method indeed does). A simple example can illustrate this. Suppose there are 2 investors who simultaneously subscribe to the fund. Investor A initially invests € 200.000 but soon after decides to withdraw $ 50.000, thereafter leaving his remaining investment unchanged at $ 150.000. Investor B initially invests $ 100.000, but shortly after makes an additional investment of $ 50.000. Like investor A he keeps his investment at $ 150.000. In my view these 2 investors have made exactly the same investment and should be treated equally in the Receiver's distribution plan. Under the net investment method both investors indeed receive the same distribution, which is only fair and appropriate. According to the rising tide method however Investor A is deemed to have already received a compensation of 33,3% on his investment and is therefore excluded from the initial distribution by the Receiver, whereas investor B is entitled to a distribution of 25% on his total investment. By all economic and financial standards the latter result can only be described as arbitrary and unfair.

Apart from additional investments and withdrawals there was another kind of transaction available to investors in the fund: a switch between different classes. An investor could for instance exchange his investment (or part of it) in class A (US$) for an investment in class B (€) or vice versa. Technically a switch can be divided into 2 transactions: a withdrawal in US$ followed by an investment in € (or vice versa). And this is in fact how the Receiver treats switch transactions. So an investor who for example initially invested $ 150.000 and shortly after converted $ 50.000 into the equivalent in € is considered to have invested in total the equivalent of $ 200.000 and withdrawn $ 50.000. Applying the rising tide method and a recovery rate of 25% would result in this investor receiving nothing from the Receiver. Whereas another investor who also invested $ 150.000 but did not switch would receive a compensation of 25%.

This outcome is evidently unfair. And although this could be avoided by ignoring the switch under the rising tide method (which the Receiver ought to have done), the need for such adjustment to avoid arbitrariness is in my view another strong argument against the rising tide method and in favor of the net investment method, in particular in an open end fund situation. Under the net investment method a switch has no impact on the net investment and therefore none on the distribution (as it shouldn't).

A further flaw of the rising tide method is that more investors are excluded from the distribution (and receive nothing) than under the net investment method. The Receiver himself points at this effect when he cites Huber on page 19 of the Motion: *"The net loss approach is ... attractive ... when under the rising tide a large number of investors ... would receive nothing. The more investors in a Ponzi scheme there are who would receive nothing under the rising tide and might therefore have difficulty paying their future expenses, the more likely the net loss method is to maximize the overall utility of the investors".* A quick look at Exhibit C shows there are a considerable number of net-loser investors who receive some compensation under the net investment method but nothing under the rising tide method (and none the other way around).

Based on the above I strongly oppose to the application of the rising tide method in general and to switch transactions being treated as a withdrawal followed by an additional investment in particular. I plead for application of the net investment method.

Yours sincerely,

Peter van de Linde
(net loser investor number I-974)

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