

**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 August 22, 2022, Receiver, Jonathan E. Perlman filed his Motion for Approval of Creditor Distribution Plan and First Interim Distribution to Creditors [ECF No. 294]. In an August 4, 2022 Order [ECF No. 284], the Court approved in part the Receiver’s Proposed Distribution Plan, authorizing an initial distribution of “\$55,452,651 to the 764 worst-off Unsubordinated Net Losers” so that all members of that class would have recovered at least 23.05% of their investments. (*Id.* 30). The Receiver’s Motion now proposes similar treatment for creditors. (*See* Mot. ¶ 16). It outlines a Proposed Creditor Distribution Plan (the “Plan”), along with a first interim distribution that would raise creditors’ recovery floor to 23.05% the value of their claims. (*See generally id.*).

Under the Plan, the Court would set a “creditor claims bar deadline . . . of sixty days from the date of any order approving the plan . . . for creditors to file a claim.” (*Id.* ¶ 5 (alteration added)). During that time, the Receiver would “mail the notice of the [deadline] to the last known address of already identified creditors” and publish the notice “in the *Sun Sentinel* and the *Wall Street Journal* for three business days within 10 days of the Approval Date to give any unknown creditors

notice of the [deadline].” (*Id.* ¶ 5 (alterations added)). Creditors who failed to respond before the deadline would be forever barred from filing claims. (*See id.* ¶ 5).

The Receiver would then “review all claims received, negotiate with claimants regarding any disputed claims and attempt to settle all such claims.” (*Id.* ¶ 6). Forty-five days after the creditors’ deadline, the Receiver would file an interim report “containing the list of allowed creditor claims and e-mail a Notice of Receiver’s Allowed Creditor Claim Determination (“Notice”) to those parties who have communicated with the Receiver regarding a creditor claim.” (*Id.*). The Receiver would also email the Notice to each known creditor, who would have 30 days to either file objections or waive their right to do so. (*See id.* ¶¶ 6–7). If the Receiver and an objecting creditor failed to resolve an objection 30 days after the waiver deadline, the Court would then hold an evidentiary hearing and rule on the issue. (*See id.* ¶ 7).

The Proposed Creditor Distribution Plan affords creditors fair notice of the claims process, as well as ample opportunity to pursue any *factual* issues that may arise once they file their claims. However, it does not give creditors an opportunity to weigh in on the *legal* issue of whether their distributions should be subject to the same rising tide framework as the Unsubordinated Net Loser investors. To afford creditors the “fair notice and . . . reasonable opportunity to respond” that equity requires, *see SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986) (alteration added; citations omitted), the Court elects to temporarily defer judgment on the Receiver’s Motion until creditors have had such an opportunity. Accordingly, it is

ORDERED that:

(1) creditors having comments on the Proposed Creditor Distribution Plan’s proposal to make distributions to creditors on a rising tide basis — on equal footing with defrauded investors — shall submit comments by September 26, 2022 in the manner set forth herein;

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(2) all responses to the Motion for Approval of Creditor Distribution Plan and First Interim Distribution to Creditors [ECF No. 294] must be filed with the Court and served on the Receiver at receiver@tcafundreceivership.com;

(3) comments shall reference *SEC v. TCA Fund Management, et al.*, 1:20-cv-21964-CMA;

(4) The Receiver shall publish his Motion for Approval of Creditor Distribution Plan and First Interim Distribution to Creditors [ECF No. 294], a response deadline, and this Order, on his website (<https://tcafundreceivership.com/>);

(5) The Receiver shall direct his counsel to serve by U.S. mail the aforementioned documents to all known creditors;

DONE AND ORDERED in Miami, Florida, this 25th day of August, 2022.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record