

**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 GP, LTD.,

Defendants, and

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

Relief Defendants.

**FOREIGN REPRESENTATIVES' MOTION TO ALTER OR AMEND
ORDER DATED AUGUST 4, 2022 [ECF No. 284] TO EXTEND STAY PENDING
APPEAL, AND ACCOMPANYING MEMORANDUM OF LAW**

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”)¹ dated June 4, 2021 [Chapter 15 Case, ECF No. 8], by and through undersigned counsel and pursuant to Fed. R. Civ. P 59(e), move to alter or amend the Court’s Order dated August 4, 2022 [ECF No. 284] (the “Distribution Order”) that granted in part the Receiver’s *Motion for Approval of Distribution Plan and First Interim Distribution* [ECF No. 208]

¹ By agreement with the Receiver the Chapter 15 Case was withdrawn to this Court from the U.S. Bankruptcy Court for this District, and docketed as Case No. 1:21-cv-21905-CMA. By further Order dated August 25, 2021, the Court closed the Chapter 15 Case for administrative purposes only and directed that all further filings be made in this Receivership Case.

(the “Distribution Motion”), solely to extend the Stay Provision of that Order as further described herein. In support of the requested relief, the Foreign Representatives rely upon the following facts and substantial matters of law.

INTRODUCTION

1. The Foreign Representatives serve as the Joint Official Liquidators (the “JOLs”) of Feeder Fund Ltd. in its ongoing liquidation proceeding (the “Cayman Proceeding”) before the Grand Court of the Cayman Islands (the “Cayman Court”), having been appointed as JOLs by Order of the Cayman Court dated May 13, 2020.

2. Among other things, the Distribution Order rejected the arguments presented by the Foreign Representatives in opposition to the Distribution Motion,² and concluded with the provision that, “This Order is stayed until **September 6, 2022** to allow the filing of an interlocutory appeal.” Distribution Order at p. 34 (emphasis in original) (the “Stay Provision”).

3. The Foreign Representatives respectfully submit that in including the Stay Provision as set forth above, the Court fully contemplated that they would perfect an interlocutory appeal from the Distribution Order.³ See *Securities & Exchange Commission v. Torchia*, 922 F.3d 1307, 1312-1313 (11th Cir. 2019) (citations omitted) (agreeing with 5th, 6th and 7th Circuits that a “district court order approving [a] receiver’s distribution plan is appealable as a collateral order.”). For the reasons set forth below, the Distribution Order should be amended so as to extend the stay for the full 60-day period within which the Foreign Representatives must file their notice of appeal under Fed. R. App. 4.

² The Foreign Representatives’ *Response* and *Sur-Reply* filed in opposition to the Distribution Motion are docketed as ECF Nos. 240 and 268 (collectively, the “Opposition Briefs”).

³ Similarly, the Court made repeated reference to the likelihood of an appeal in its remarks on the record at the hearing held on July 11, 2022.

MEMORANDUM OF LAW

Extension of the Stay Provision is Appropriate to Afford the Foreign Representatives the Full 60-Day Period Within Which to Perfect Their Appeal to the Eleventh Circuit

4. The time within which to file a notice of appeal from an order of the district court is governed by Fed. R. App. 4. In most instances, “the notice of appeal must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). The Rule provides an exception, however, for “any party” to file an appeal “within 60 days after entry of the judgment or order appealed from if one of the parties is . . . a United States agency.” Fed. R. App. P. 4(a)(1)(B)(ii). Of course, the Securities and Exchange Commission, which is the Plaintiff in this action and was an active participant in the proceedings arising from the Distribution Motion and culminating in the Distribution Order, is an agency of the United States. <https://www.usa.gov/federal-agencies/s#current-letter>.

5. As presented to the Court in the Opposition Briefs and at the hearing on the Distribution Motion held on July 11, 2022, the Foreign Representatives believe that the issue resolved against them in the Distribution Order is one of first impression that is of great importance to the cross-border insolvency community and to indirect foreign investment in companies in the United States through feeder funds such as Feeder Fund Ltd. in this case. Accordingly, it is respectfully submitted that in order to afford the Foreign Representatives the full 60-day period provided under Fed. R. App. P. 4(a)(1)(B)(ii) within which to assess and formulate the grounds for the interlocutory appeal that the Court clearly contemplated in the Distribution Order, plus an additional ten (10) days within which to seek a formal stay pending that appeal under Fed. R. App. P. 8, the Court should amend the Stay Provision of the Order so as to extend the stay through and

including **October 13, 2022**,⁴ being a period of seventy (70) days from entry of the Amended Distribution Order sought in this Motion.

6. Extension of the Stay Provision as sought herein will maintain the status quo until such time as the Foreign Representatives have determined to pursue and perfect an interlocutory appeal of the Distribution Order to the Eleventh Circuit.

CONCLUSION

7. For the foregoing reasons, the Foreign Representatives respectfully request pursuant to Fed. R. Civ. P. 59(e) that the Distribution Order be amended as set forth above so as to maintain the status quo for the full 60-day period afforded them to perfect their appeal to the Eleventh Circuit under Fed. R. App. P. 4(a)(1)(B)(ii), plus an additional ten (10) days within which to seek a stay pending such appeal pursuant to Fed. R. App. P. 8, each calculated from entry of the original Distribution Order so as to expire on **October 13, 2022**, without prejudice to their right to seek, and of any party to oppose, the entry of a formal stay pending appeal pursuant to Fed R. App. P. 8.

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⁴ While the entry of an Amended Distribution Order would initiate the running of a new 60-day period within which to file a notice of appeal under Fed. R. App. P. 4(a)(4)(A)(iv), the Foreign Representatives do not wish to prolong the appellate process unduly, and so propose to extend the Stay Provision to a date that is 70 days from entry of the original Distribution Order.

S.D. Fla. L.R. 7.1(a)(3) CERTIFICATE OF CONFERENCE

Undersigned counsel certifies that he has conferred by telephone and email with counsel for the Receiver, and by email with counsel for the SEC, regarding the Foreign Representatives request to alter or amend the Distribution Order to extend the stay provided for therein, and is authorized to represent that the Receiver and SEC have no objection to an extension of the Stay Provision until the deadline to appeal.

Dated: September 1, 2022

BAKER & MCKENZIE LLP

/s/ Mark D. Bloom

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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