

**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.,
et al.,
Defendants.

**RECEIVER'S MOTION TO EXPAND COLLECTION
PARAMETERS OF NET WINNINGS FROM THE NET WINNERS**

Jonathan E. Perlman, Esq., court-appointed Receiver (the "Receiver") of the Receivership Entities,¹ through undersigned counsel, hereby files this Motion to Expand Collection Parameters of Net Winnings From the Net Winners (the "Motion"), and states as follows:

RELEVANT BACKGROUND

1. On May 11, 2020, the Securities and Exchange Commission ("SEC") filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp., TCA Global Credit Fund GP, LTD, TCA Global Credit Fund, LP, TCA Global Credit Fund, LTD., and TCA Global Credit Master Fund, LP (collectively, "Defendants"). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3]. On the same day, this Court granted the Expedited Motion for Appointment of Receiver and

¹ The "Receivership Entities" means TCA Fund Management Group Corp., TCA Global Credit Fund GP, Ltd., TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd., TCA Global Credit Master Fund, LP, TCA Global Lending Corp., and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

appointed Jonathan E. Perlman, Esq., of the law firm Genovese, Joblove & Battista, P.A. (“GJB”), as permanent Receiver over the Receivership Entities [ECF No. 5] (the “Appointment Order”).

3. Pursuant to Section X of the Appointment Order, “the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in Receiver’s discretion, and in consultation with Commission counsel, be advisable or proper to recover and/or conserve Receivership Property.” However, leave of this Court is required to resume or commence certain litigation. *See* Appointment Order at §X ¶36.

4. Further, “the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate.” *Id.* at §X ¶37.

5. The structure of the funds here is a typical “Master/Feeder” structure. Feeder Fund LP and Feeder Fund Ltd. raised money from investors (the “Investors”) and “fed” that money to the Master Fund, which, in turn, provided financing to small- and medium-sized businesses. The Receiver’s investigation has revealed that some of the Investors did not receive any funds back on account of their investments, some Investors received a portion of the funds they invested, and other Investors received back more than they invested.

6. For the Investors receiving back more than they invested, the Receiver calculated those total “profits” to be more than seventy million dollars. Hundreds of Investors received these net winnings.

7. The Receiver contends that any “profits” received in excess of the amount invested are transfers made to the Investors that are avoidable and recoverable for the benefit of all Investors (the “Net Winnings Claims”). This is because any monies that were repaid to Investors were done so based upon an overstated NAV and thus constitute fictitious profits.

STATUS OF COLLECTION EFFORTS AND AVOIDANCE ACTIONS

8. On April 8, 2022, the Receiver filed the Motion for Leave of Court to Pursue Avoidance Actions and Approval of Proposed Procedures [ECF No. 225] (the “Avoidance Action Motion”). Through the Avoidance Action Motion, the Receiver sought court approval to pursue collection of the Net Winnings, amounting to \$10,000 or more, from the Net Winners and to fix procedures for the litigation and settlement process to streamline the process and save costs.

9. Also on April 8, 2022, the Court entered the Order Granting Receiver’s Motion for Leave of Court to Pursue Avoidance Actions and Approval of Proposed Procedures [ECF No. 226] (the “Approval Order”).

10. Between April 29, 2022, and January 1, 2023, the Receiver sent demand letters to all net winner recipients who received \$10,000 or more in Net Winnings and has entered into settlements for approximately \$1,400,000.

11. To date, the Receiver has collected nearly \$1,400,000 in Net Winnings from the Net Winners who received more than \$10,000 in Net Winnings. Additional negotiations are pending that are expected to bring Net Winner recoveries above \$2 million. The Receiver and his professionals also continued to investigate and prepare additional lawsuits seeking recoveries for the ultimate benefit of stakeholders.

12. During this time, the Receiver has incurred attorneys’ fees and costs, which have been inconsequential to the results obtained in collections. Specifically, the Receiver has incurred

fees amounting to approximately \$101,000 and expenses totaling approximately \$1,000.

RELIEF REQUESTED

Through this Motion, the Receiver seeks to expand the collection parameters to all net winner recipients who received between \$5,000 and \$10,000 in Net Winnings. The Receiver proposes to utilize the same procedures for pursuing the Net Winning Claims as set forth in the Avoidance Action Motion and granted by the Approval Order.

Pursuant to Section X of the Appointment Order, the Receiver is currently authorized and empowered to compromise actions or proceeding of any kind; the Receiver may consummate settlement of claims against Net Winners in his business judgment without further leave of Court or additional notice.

The Receiver's objective in pursuing the Net Winner Claims, between \$5,000 and \$10,000 in Net Winnings, is to maximize the net recovery to the Receivership Estate. The Receiver will use his business judgment at all times in pursuing the Net Winner Claims and remains focused on the objective of maximizing recovery. This may include seeking exceptions to the procedures described in the Avoidance Action Motion and/or Approval Order in circumstances that warrant exception. The Receiver may request tolling agreements to stop the running of statute of limitations and statutes of repose. The Receiver may also seek to engage counsel on a contingency basis to pursue recovery of the Net Winner Claims.

This Motion is filed following the Receiver's communications with counsel for the SEC and the Receiver is advised that the SEC does not oppose the relief sought.

WHEREFORE, Receiver, Jonathan E. Perlman, Esq., respectfully requests that this Honorable Court enter an Order (i) granting this Motion in the form substantially similar to **Exhibit A** attached hereto, (ii) expanding the collection parameters of the Approval Order to

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allow the Receiver to pursue collection efforts to all Net Winner recipients who received between \$5,000 and \$10,000 in Net Winnings, including the filing of any Net Winner Adversary Proceedings, (iii) permitting the Receiver to utilize the same procedures for settlement process and Net Winner Adversary Proceedings as set forth in the Avoidance Action Motion and Approval Order, and (iv) awarding such other and further relief as the Court deems just and proper.

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

I hereby certify that the Receiver and counsel for the Receiver conferred with counsel for the SEC, on February 3, 2023, via email regarding the requested relief and is authorized to represent that the SEC has no objection to the relief sought.

DATED: February 6, 2023.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that, on February 6, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Eric D. Jacobs
Eric D. Jacobs, Esq.

SERVICE LIST

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Case No. 20-civ-21964-CMA

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**ORDER GRANTING RECEIVER'S MOTION TO EXPAND
COLLECTION PARAMETERS OF NET WINNINGS FROM THE NET WINNERS**

THIS CAUSE came before the Court upon the Receiver's Motion to Expand Collection Parameters of Net Winnings From the Net Winners (the "Motion"). The Court having considered the Motion and being otherwise duly advised in the premises. Accordingly, it is

ORDERED AND ADJUDGED that the Motion is **GRANTED**. The Receiver is authorized to expand the collection parameters to allow the Receiver to pursue collection efforts to all Net Winner recipients who received between \$5,000 and \$10,000 in Net Winnings, including the filing of any Net Winner Adversary Proceedings. The procedures for the litigation and settlement process are approved as set forth in Order Granting Receiver's Motion for Leave of Court to Pursue Avoidance Actions and Approval of Proposed Procedures [ECF No. 226].

DONE AND ORDERED in Miami, Florida, on _____.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record