

**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.

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**RECEIVER’S UNOPPOSED MOTION FOR AUTHORIZATION TO RETAIN  
INVESTMENT BANKER**

Jonathan E. Perlman, Esq., court-appointed receiver (the “Receiver”) over the Receivership Entities,<sup>1</sup> by and through undersigned counsel, hereby files this Motion For Authorization To Retain Investment Banker (the “Motion”) and states as follows:

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., (“Receivership Defendants”), and TCA Global Credit Fund, LP, TCA Global Credit Fund, LTD., and TCA Global Credit Master Fund, LP (“Relief Defendants”) (collectively, the “Defendants”). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3].

3. On the same day, this Court granted the Expedited Motion for Appointment of Receiver and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista,

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<sup>1</sup> All terms not specifically defined herein have the meaning ascribed to them in the SEC’s Motion for Appointment of Receiver [ECF No. 3] and the Court’s Appointment Order [ECF No. 5], and the Court’s First Expansion Order [ECF No. 16].

P.A. (“GJB”), as permanent Receiver over the Receivership Entities (the “Appointment Order”) [ECF No. 5]. Thereafter, on December 22, 2022, this Court granted the Receiver’s Unopposed Motion for Authorization to Retain and Substitute Venable LLP as Counsel for the Receiver. [ECF Nos. 324, 325]. Accordingly, effective January 1, 2023, the Receiver, as well as his counsel, became part of Venable LLP, and the Receiver retained Venable LLP as his counsel. Venable LLP was substituted for Genovese Joblove & Battista, P.A. [*Id.*].

4. Pursuant to the Appointment Order, the Receiver is empowered to, among other things, “engage and employ persons in Receiver’s discretion to assist Receiver in carrying out Receiver’s duties and responsibilities . . . .” [ECF No. 5 at § II ¶ 7.F].

5. Further, pursuant to § XIV ¶¶ 52–53 of the Appointment Order, the Receiver may also solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out his duties under the Appointment Order. The Retained Personnel may only be engaged after “Order of the Court authorizing such engagement.” [*Id.* at § XIV ¶¶ 52–53].

6. Receivership Property is defined within in the Appointment Order as “property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly” (“Receivership Property”). [*Id.* at II ¶ 7A.].

7. One example of Receivership Property is JLE, Ltd., a New Zealand entity (“JLE”). JLE is wholly owned by Zeecol Finance, LLC, a Florida limited liability company (“Zeecol”), and Master Fund controls 100% of the voting shares of Zeecol.

8. JLE is an electrical contractor based in Auckland, New Zealand that specializes in

larger commercial and industrial projects in New Zealand, Australia, and Papua New Guinea.

9. The Receiver is in the process of selling JLE, and all of the assets owned by JLE or the Receiver's interests in JLE, as part of the liquidation of receivership assets.

10. Accordingly, acting under the express authority of the Appointment Order, the Receiver solicited McGrathNichol, an investment banker, to assist in the sale of JLE and all of JLE's assets, or the Receiver's interests in JLE. The Receiver believes in his best judgment, that McGrathNichol is highly experienced and will best be able to assist the Receiver in carrying out his duties to maximize the value of JLE for the benefit of receivership estate and investors.

11. The Receiver and his Retained Professionals, including Development Specialists, Inc. ("DSI") engaged in significant due diligence before retaining McGrathNichol. Specifically, the Receiver directed JLE to solicit parties in New Zealand to provide an investment banking proposal for the liquidation of the estate's interest in JLE. Of the three parties that responded to DSI's solicitation, two of the parties, Deloitte and McGrathNichol, submitted proposals, and one of the parties declined to make a bid. Thereafter, the Receiver and DSI reviewed each proposal and followed up with web meetings with each to interview the firms for their experience and capabilities. JLE's independent director and the Receiver agreed upon the selection of McGrathNichol to assist with the sale, as they concluded that McGrathNichol was in the best position to maximize the value of JLE. As an additional benefit, McGrathNichols agreed to a discount of its fees from its proposal, which is reflected in the engagement letter attached hereto.

12. McGrathNichol is a professional services firm in Australia and New Zealand that provides restructuring and investment banking services to the middle market. They are affiliated (but not a part of) Alvarez & Marsal, and are currently providing management services to JLE. Accordingly, McGrathNichol has intimate knowledge of the company and is in the best position

to maximize its value for the benefit of the Receivership Estate.

13. The Receiver seeks this Court's authorization to retain McGrathNichol to act as its exclusive financial advisor in connection with the Receiver's efforts to sell JLE and the assets owned by JLE or the Receiver's interest in JLE.

14. The Receiver further seeks this Court's authorization to enter into the engagement letter, which is attached hereto as **Exhibit A**.

15. McGrathNichol will provide a number of services as provided in the engagement letter, including: (1) preparing a teaser and Information Memorandum for potential interested parties, as well as collecting a list of potential purchasers; (2) identifying a list of potential purchasers; (3) conducting discussions and negotiations with preferred bidders and their advisers; (4) managing the due diligence process including collation and control of confidential information to be provided to potential purchasers, as appropriate; (5) assisting and providing guidance on all other aspects of the sale process through to financial settlement, among other services.

16. McGrathNichol agreed to the following fee structure: a fixed fee of \$100,000 (plus 15% GST and minimal disbursements), plus a success fee calculated as a percentage of the gross implied enterprise value on cash-free, debt-free basis payable on settlement. The fee structure is set forth on Exhibit A at page 3.

17. Moreover, per the terms of the engagement letter, while JLE has the sole and absolute right to accept or reject any offer received by a third party, any such acceptance or rejection requires prior approval of the Receiver, the SEC, and the Court. And, McGrathNichol agrees to abide by the SEC guidelines regarding expense reimbursement.

18. Lastly, the fees and indemnity from JLE are restricted solely to JLE and not the Receivership, its holdings, or current equity holders. And, the Receiver is signing merely as an

acknowledgment and not as a guarantor of any sort. See **Exhibit B**.

19. McGrathNichol has significant prior experience in similar matters and has advised the Receiver that no conflicts of interest exist in connection with its potential retention in this matter.

WHEREFORE, Receiver, Jonathan E. Perlman, by and through his undersigned counsel respectfully requests that this Honorable Court grant the Motion and authorize the Receiver's retention of McGrathNichol, including entering the engagement letter attached to this Motion as Exhibit A, and for such other relief as this Court deems just and proper.

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

Undersigned counsel hereby certifies that counsel for the Receiver, Elizabeth G. McIntosh, conferred with counsel for the SEC, Stephanie Moot, on January 19, 2023 and February 15, 2023, regarding the requested relief and is authorized to represent that the SEC has no objection to the relief requested herein.

VENABLE LLP  
*Attorneys for Jonathan E. Perlman, Receiver*  
100 Southeast 2nd Street, Suite 4400  
Miami, Florida 33131  
Telephone: (305) 349-2300

By: /s/Elizabeth G. McIntosh  
Elizabeth G. McIntosh, Esq.  
Florida Bar No. 1011555  
[egmcintosh@venable.com](mailto:egmcintosh@venable.com)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was served via CM/ECF Notification to all parties and notification of such filing to all CM/ECF participants in this case on the 17th day of February, 2023.

/s/ Elizabeth G. McIntosh  
Elizabeth G. McIntosh, Esq.

**SERVICE LIST**

***Securities and Exchange Commission v. TCA Fund Management Group Corp., et al.***  
**Case No. 20-Civ-21964-CMA**

Paul Joseph Battista, Esq.  
[pjbattista@venable.com](mailto:pjbattista@venable.com)  
Michael A Friedman, Esq.  
[mafriedman@venable.com](mailto:mafriedman@venable.com)  
Gregory M. Garno, Esq.  
[gmgarno@venable.com](mailto:gmgarno@venable.com)  
John H. Genovese, Esq.  
[jhgenovese@venable.com](mailto:jhgenovese@venable.com)  
Brett M. Halsey, Esq.  
[bmhalsey@venable.com](mailto:bmhalsey@venable.com)  
Heather L. Harmon, Esq.  
[hlharmon@venable.com](mailto:hlharmon@venable.com)  
Eric Jacobs, Esq.  
[edjacobs@venable.com](mailto:edjacobs@venable.com)  
Elizabeth G. McIntosh, Esq.  
[egmcintosh@venable.com](mailto:egmcintosh@venable.com)  
Jonathan Perlman, Esq.  
[jeperlman@venable.com](mailto:jeperlman@venable.com)  
Venable LLP  
100 Southeast 2nd Street, Suite 4400  
Miami, Florida 33131  
*Attorneys for Jonathan E. Perlman,  
Receiver*

Andrew O. Schiff, Esq.  
[schiffa@sec.gov](mailto:schiffa@sec.gov)  
Stephanie N. Moot, Esq.  
[moots@sec.gov](mailto:moots@sec.gov)  
801 Brickell Avenue, Suite 1950  
Miami, Florida 33131  
*Attorneys for Plaintiff Securities and  
Exchange Commission*

James J. Webb, Esq.  
[jwebb@mitrani.com](mailto:jwebb@mitrani.com)  
Mitrani, Rynor, Adamsky & Toland, P.A.  
1200 Weston Road, PH  
Weston, FL 33326  
*Attorneys for Interested Parties Krystal  
Lazares-Scaretta, Robert A. Scaretta and  
American Gold Rush, LLC*

Andrew Fulton , IV, Esq.  
[andrew@kelleylawoffice.com](mailto:andrew@kelleylawoffice.com)

Brian S. Dervishi, Esq.  
[bdervishi@wdpalaw.com](mailto:bdervishi@wdpalaw.com)

Craig Vincent Rasile  
[crasile@mwe.com](mailto:crasile@mwe.com)

Gerald Edward Greenberg, Esq.  
[ggreenberg@gsgpa.com](mailto:ggreenberg@gsgpa.com)

Gregg Alan Steinman  
[gsteinman@sflp.law](mailto:gsteinman@sflp.law)

Mark David Bloom, Esq.  
[mark.bloom@bakermckenzie.com](mailto:mark.bloom@bakermckenzie.com)

Martha Rosa Mora, Esq.  
[mmora@arhmf.com](mailto:mmora@arhmf.com)

Michael David Heidt, Esq.  
[mheidt@aol.com](mailto:mheidt@aol.com)

# Exhibit “A”



McGrathNicol

9 February 2023

Colin McCloy, Director  
JLE Holdings Limited  
154-156 Gill Street  
New Plymouth 4312  
NEW ZEALAND

**McGrathNicol Limited**

Level 17, AIG Building  
41 Shortland Street  
Auckland 1010, New Zealand

PO Box 106-733  
Auckland 1143, New Zealand

T +64 9 366 4655  
F +64 9 366 4656

mcgrathnicol.com

**JLE Holdings Limited (JLE Electrical, "JLE") – Sale of business**

Thank you for the opportunity to work with you on the sale of JLE's business. This letter serves to formalise the engagement between us to provide JLE with sell-side deal support.

**Background**

We understand that the JLE shareholder (Zeecol Finance LLC "**Zeecol**", owned by TCA Fund Management Group Corp. "**TCA**") wishes to sell the business, either via a share sale or whole-business and assets sale, including its operations in New Zealand, Australia, and Papua New Guinea, and including brand and intellectual property.

**Sale considerations and stages**

We understand that you want to achieve the following objectives in the sale:

- maximise the sale price;
- ensure any process is structured and efficient, with a target completion date of 30 June 2023;
- effect a straightforward transaction with a suitable purchaser or purchasers; and
- minimise the disruption to JLE's business and management throughout the sale process.

To achieve the above, it is envisaged that the sale process would involve the following stages.

***Stage 1 - Preparation***

Stage 1 will involve preparing a teaser and Information Memorandum ("**IM**") for provision to potential interested parties and the collation of a list of potential purchasers. As discussed, this will be a targeted (rather than publicly advertised) sale process.

We will also undertake other preparation, including compiling due diligence information and creating lead workbooks summarising JLE's financial information, creating normalised EBITDA results, and reconciling these to annual accounts.

***Stage 2 – Indicative bid***

Prior to the dissemination of any detailed information relating to JLE, all interested parties will be required to sign a confidentiality agreement. The detailed IM would then be provided to interested parties. The objective of this stage is to balance the preservation of commercially sensitive information and time engaging with potential purchasers, while at the same time providing enough information to create interest from potential purchasers and enable meaningful indicative non-binding offers to be submitted.





### ***Stage 3 – Due diligence and binding offer***

Based on indicative non-binding offers, selected parties will be invited to undertake detailed due diligence. This will involve provision of access to detailed information, made available via a virtual data room to track interested party engagement (subject to interested party requirements). We will discuss with you at the time how best to manage this stage, i.e. whether up to three bidders are allowed to participate in due diligence, or whether a single party is given exclusivity (in exchange for a non-refundable deposit).

Bidder(s) will also be given an opportunity to meet key JLE management and receive a presentation from them. If JLE agrees to any such requests, then we would manage this process to minimise interruptions to management.

The information provided would include a sale and purchase agreement (“SPA”), and would be negotiated between TCA/Zeecol and the bidder as part of the due diligence process. Prior approval of the form of the SPA would be obtained from TCA/Zeecol before its inclusion in the data room. We will work with TCA/Zeecol/JLE’s lawyers to manage the drafting of the SPA and will assist with the commercial and practical aspects of the SPA negotiation.

### **McGrathNicol’s role**

McGrathNicol’s overall role will be to manage and provide independent and general financial advice in relation to the sale process. Our role would include the following:

- identifying a list of potential purchasers;
- if necessary, preparing appropriate advertising, and arranging placement in relevant publications. Currently, this is not expected to be required, as purchasers can be targeted directly;
- preparing:
  - the initial teaser for provision to potential interested parties;
  - an IM for distribution to selected interested parties; and
  - a confidentiality agreement (with input from lawyers) to be signed by all interested parties (and their advisers) prior to the dissemination of the IM.
- managing stage 2 and 3 of the sale process, including negotiations (alongside or at the instruction of JLE/TCA Receiver) with preferred bidders and their advisers;
- managing the due diligence process including collation and control of confidential information to be provided to potential purchasers as appropriate;
- assisting and providing guidance on all other aspects of the sale process through to financial settlement, including liaising with principal parties, legal and other professionals, financiers, and other relevant parties as required by JLE/TCA Receiver.

The use of McGrathNicol as interface with prospective purchasers will minimise disruption to JLE’s business. For the avoidance of doubt, McGrathNicol will not prepare a vendor due diligence report, nor provide tax advice in relation to the sale.

Final negotiation of the SPA, receipt of deposits (if any) and management of settlement will be conducted by JLE/TCA Receiver with support from their legal advisors.

### **Reporting**

During the sale process, we will report to JLE/TCA Receiver on a fortnightly basis (once the sale process commences), or such other frequency as is appropriate in the circumstances.



### Timing

An indicative timetable is set out below. The timetable can be accelerated if it is determined that a wide enough audience has been reached and there are sufficient interested parties to proceed.

Action	Date
Agree scope and execute engagement letter	As soon as possible
Preparation phase, including collating due diligence information	Already undertaken during November 2022 – February 2023
Teaser released to targets	Early February 2023
IM approved by JLE	Early February 2023
IM released to interested parties	Week commencing 13 February 2023
Indicative offers due	24 March 2023
McN presents indicative offers to JLE/TCA Receiver and bidders selected to proceed	Week commencing 27 March 2023
Detailed due diligence undertaken by selected bidders; management presentations delivered; SPA negotiated	3 April to 24 May 2023
Final binding offers due	24 May 2023
McN presents final binding offer(s) to JLE/TCA Receiver and final purchaser agreed	26 May 2023
Preparation for settlement and handover	June 2023
Completion target date	30 June 2023

### Access to information

Through our previous work as advisers, we already have access to much of JLE's financial information. We will however require access to all the books and records and management of JLE to complete our scope. You will endeavour to ensure that all such access necessary for the purpose of the engagement is granted to us as and when reasonably required. The scope of engagement assumes that access to books and records, and where appropriate to key members of the management team, will be available.

### Fees

The fee is structured as follows:

- A fixed fee of \$100,000 (plus GST and all reasonable disbursements) for stage 1. This will be invoiced monthly as the information is prepared and the work undertaken with the final invoice for this stage to be issued for the period ending 28 February 2023.
- In addition to the fixed fee above, contingency compensation in the form of a success fee calculated as a percentage of the gross implied enterprise value on a cash-free, debt-free basis payable on settlement, calculated as follows:
  - 2.5% of the first \$4m
  - 3.5% of the next \$1m
  - 4.5% of the next \$1m
  - 5.5% of any price above \$6m
  - The sale prices referred to above exclude GST, if any.



Enterprise value is the value attributed to JLE's business assuming it had no debt (including no shareholder loans or contractor bonds), no cash (including cash backing bonds), and a normal level of working capital.

Contingency compensation is payable upon settlement<sup>1</sup>. The above amounts exclude disbursements and GST. Disbursements may include costs such as advertising, virtual data room fees and travel and accommodation required to support the sale process. Independent legal advice may also be required for a transaction of this nature and is not included in our scope or fee. McGrathNicol shall seek JLE's and the TCA Receiver's prior approval to seek independent legal advice or incur any expense or disbursement above \$10,000.

As an example, if the business were to sell with an enterprise value of \$5.5m, the fee payable would be: (\$4m x 2.5%) + (\$1m x 3.5%) + (\$0.5m x 4.5%) + \$100,000 fixed fee = \$257,500 (excluding disbursements and GST).

### **McGrathNicol resources**

The engagement will be performed under the direction of Conor McElhinney and Andrew Grenfell (engagement leaders). The engagement leaders will be closely involved in the process, including dealing with potential purchasers, working with JLE management to undertake any management presentations required, assessing offers and all strategic discussions with JLE. David Shaw and Martin Badenhorst will undertake the detailed aspect of assignment, supported by additional resources if required.

### **Limitations**

Our engagement is an advisory engagement, which is not subject to New Zealand, or any other, auditing or assurance standards and consequently no conclusions intended to convey assurance will be expressed.

Further, as our terms of reference do not constitute an audit or review in accordance with New Zealand auditing standards, they will not necessarily disclose all significant matters about JLE, or reveal errors and irregularities, if any, in the underlying information.

If elements of our terms of reference relate to prospective financial information, we will not compile, examine, or apply other procedures to such information in accordance with New Zealand, or any other, auditing or assurance standards. Accordingly, we will not express any opinion as to whether any forecast or projection of the business will be achieved, or whether any assumptions underlying any forecast or projection of the business are reasonable. We will not warrant or guarantee any statements as to future prospects of the business. There will usually be differences between forecast or projected and actual results because events and circumstances frequently do not occur as expected or predicted, and those differences may be material.

### **Terms and conditions**

We accept this engagement and will commence work on the basis that our Terms and Conditions of Business, as set out in Appendix 1, will apply to this work, and govern our relationship with you. The Terms and Conditions of Business shall be treated as being an integral part of this agreement. This letter is the "Engagement Letter" mentioned in our Terms and Conditions of Business. Please read these Terms and Conditions carefully. In particular, we draw your attention to Clause 11 "Limitation of Liability".

JLE has the sole and absolute right to accept or reject any offer received by a third party, provided, however, that any such acceptance or rejection requires prior approval of TCA's Receiver, the SEC, and the Court in relation to the TCA receivership.

Should JLE or the TCA Receiver decide not to proceed with a sale of JLE, or not to accept any offer put forward, then JLE shall pay McGrathNicol the lesser of a) McGrathNicol's time-costs (a summary of which is to be provided on a monthly basis), expenses, disbursements and GST, or b) the aggregate of the fixed and

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<sup>1</sup> Settlement is defined as when a SPA has been executed by both the vendor and purchaser and the vendor has received payment of the full (or part in the case of an earn-out) purchase price on closing.



contingency fees (plus expenses, disbursements, and GST) as if the highest credible and/or verified offer received had been accepted.

McGrathNicol agrees to abide by SEC guidelines on expense reimbursement.

**Termination**

This agreement will terminate when services described have been completed. However, either party may terminate this agreement upon fourteen (14) days' written notice. In situations where this does occur, JLE will pay McGrathNicol full fees (and related expenses) for all work done up to and including the date of termination, based on the time-costs incurred (a summary of which will have been provided on a monthly basis) up to that point, at our standard rates, plus all reasonable disbursements and GST. In addition, McGrathNicol will not be required to provide a copy of their working papers. The right to retain working papers that support advice or opinions given up to the date of termination is maintained.

**Governing law and jurisdiction**

This agreement is made under, and shall be governed by New Zealand law, and all disputes arising from or under this agreement shall be subject to the exclusive jurisdiction of the New Zealand courts.

**Entire agreement**

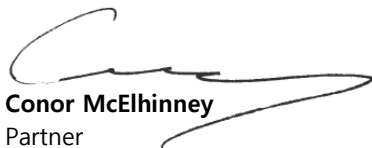
This letter together with its appendices, forms the entire agreement and understanding between us with respect to the subject matter hereof. This letter supersedes all previous arrangements and understandings between the parties with respect to the subject of this letter, which shall cease to have any further force or effect. Any variation to the terms of this letter shall be made in writing and will not be effective unless signed by a partner of McGrathNicol and by a duly authorised representative of JLE.

**Agreement**

Please confirm your agreement to and acceptance of the terms of this letter and the appendices by signing and returning to us the enclosed copy. For the avoidance of doubt, the terms of this letter and its appendices shall apply to all work carried out by us in connection with this engagement prior to the date of countersignature of this letter. If there are any aspects of this letter or its appendices that you wish to discuss, please let us know.

If you have any questions in relation to this letter, please contact me on +64 27 952 8680.

Yours sincerely

  
**Conor McElhinney**  
Partner

**Acceptance:**

Terms of sale engagement accepted:

**Acknowledgement:**

Terms of sale engagement acknowledged:

Signed: \_\_\_\_\_

Name: Colin McCloy

Position: Director

Date: \_\_\_\_\_

For and on behalf of JLE Holdings Limited

Signed: \_\_\_\_\_

Name: Jonathan Perlman

Position: Receiver

Date: \_\_\_\_\_

For and on behalf of TCA Fund Management Group



## **Appendix 1**

### McGrathNicol Terms and Conditions of Business

#### **1. Introduction**

- 1.1. McGrathNicol have set out in this document our basic terms and conditions of business (the "Terms"), which, together with our Engagement Letter (together called "this Agreement"), will apply to all work McGrathNicol undertakes for you with respect to this engagement. If there is any conflict between these Terms and our Engagement Letter, then the Engagement Letter shall prevail.
- 1.2. For the purposes of clauses 2–16, "McGrathNicol" includes its partners, and employees.

#### **2. Our services**

- 2.1. McGrathNicol will provide the services set out in our Engagement Letter (the "Services") and will use all reasonable commercial efforts to provide the Services in an efficient and timely manner, using the necessary skill and expertise to an appropriate professional standard.

#### **3. Your obligations**

- 3.1. You agree to pay for the Services in accordance with this Agreement.
- 3.2. You will provide McGrathNicol promptly with such information as may reasonably be required for the proper performance of the Services, including access to appropriate members of your staff, records, information, technology, systems, and premises.
- 3.3. McGrathNicol shall be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it.
- 3.4. You shall retain responsibility for the use of, or reliance on, advice or recommendations supplied by us in the delivery of the Services.
- 3.5. You undertake that, if anything occurs after information is provided by you to McGrathNicol, to render such information untrue, unfair, or misleading, you will promptly notify McGrathNicol and, if required by McGrathNicol, take all necessary steps to correct any announcement, communication or document issued which contains, refers to or is based upon, such information.
- 3.6. You acknowledge that information made available by you, or by others on your behalf, to, or which is otherwise known by, partners or staff of McGrathNicol who are not engaged in the provision of the Services shall not be deemed to have been made available to the individuals within McGrathNicol who are engaged in the provision of the Services.

#### **4. Confidentiality**

- 4.1. Both parties acknowledge that they may, in the course of the engagement, be exposed to or acquire information that is proprietary or confidential to the other party. Both parties agree to hold such information in strict confidence, and not to divulge such information except as may be required by law or judicial process, by any persons or bodies responsible for regulating that party's business (including any regulatory or accounting professional supervisory authorities in New Zealand or elsewhere), as required by a party's internal policies or as the party reasonably determines is necessary to protect its own legitimate interests.

#### **5. Staff**

- 5.1. You agree that during the provision of the Services, and for a period of three months thereafter, you will not make any offer of employment to any McGrathNicol partner or employee involved in the provision of the Services, without our prior consent.

#### **6. Benefit of advice**

- 6.1. Unless otherwise specifically stated in the Engagement Letter, any advice or opinion relating to the Services is provided solely for your benefit and may not be disclosed in any way, including any publication on any electronic media, to any other party and is not to be relied upon by any other party.
- 6.2. During the supply of the Services, we may supply oral, draft, or interim advice, reports or presentations but in such circumstances our written advice or final written report shall take precedence. No reliance should be placed



by you on any oral, draft or interim advice, reports or presentations. Where you wish to rely on oral advice or an oral presentation, you shall inform us and we will provide documentary confirmation of the advice.

- 6.3. McGrathNicol shall not be under any obligation in any circumstance to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.

**7. Electronic mail**

- 7.1. If you ask us to transmit any document to you electronically, you agree to release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to your system or any files by the transmission (including by any computer virus).
- 7.2. You may not rely on electronically transmitted advice or opinion unless it is subsequently confirmed by fax or letter signed by a partner of McGrathNicol.

**8. Fees, expenses and payment terms**

- 8.1. The time based fees, if any, quoted in the Engagement Letter or as separately quoted in a fee letter will remain in force until 31 March or 30 September (whichever occurs first) and we may increase fees for work continuing past that date. We review our time based fees six monthly.
- 8.2. Out-of-pocket expenses incurred in connection with the engagement will be charged to you.
- 8.3. The consideration payable for any supply made or to be made under this Agreement is exclusive of, any goods and services tax ("GST"). If GST is payable on any supply made or to be made under this Agreement, you agree that the consideration payable for any such supply shall be increased by an amount equal to the amount of GST payable by McGrathNicol in respect of that supply.
- 8.4. Accounts are to be paid within seven days of the billing date. If they are not paid by this date, we may charge you an additional amount for the Services equal to interest on any outstanding balances at a rate equal to 2% over the 180 Day Bank Bill Rate.
- 8.5. If we are required (pursuant to any order, subpoena, directive or other legal or regulatory process) to produce documents and/or information, answer enquiries, attend court or meetings or deal with any similar requests in relation to the Services for, or by, any judicial, regulatory, administrative or similar body or entity (including without limitation, any foreign regulator or similar), you shall reimburse us at standard billing rates for our professional time and expenses, including reasonable legal fees, incurred in dealing with those matters.

**9. Problem resolution**

- 9.1. If at any time you would like to discuss with us how the Services can be improved or if you have a complaint about them, you are invited to telephone the partner or director, as the case may be, identified in the Engagement Letter or alternatively the Managing Partner. We will investigate any complaint promptly and do what we can to resolve the difficulties.
- 9.2. If the problem cannot be resolved, the parties agree to enter into mediation, or some other form of alternative dispute resolution, before commencing legal proceedings.
- 9.3. In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the Services until such time as the dispute is resolved or the fees are paid. Suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension.

**10. Termination of Agreement**

- 10.1. Each of us may terminate this Agreement if:
- the other commits any material or persistent breach of its obligations under this Agreement (which, in the case of a breach capable of remedy, shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy); or
  - the other becomes insolvent; or
  - the Services are suspended under clause 9.3 for more than 10 normal working days.
- 10.2. Termination must be effected by written notice served on the other.



10.3. Termination under this clause shall be without prejudice to any rights that may have accrued for either of us before termination and all sums due to us shall become payable in full when termination takes effect.

**11. Limitation of liability**

11.1. In this section, we set out, and you accept, the limitations which apply to our liability to you should you have reason to make a claim against us. The limitations and exclusions are accepted by both of us to be fair and reasonable, given the duties we are undertaking, the sums to which we are entitled and the availability (and cost) of insurance.

11.2. Nothing in these Terms excludes, restricts or modifies the application of the provisions of any statute where to do so would contravene that statute or cause any part of these Terms to be void.

11.3. These Terms, and the Engagement Letter, are the only communications governing our relationship. Subject to clause 11.2, McGrathNicol expressly excludes and will have no liability for any statements, representations, guarantees, conditions or warranties, including any which may be implied by statute, common law or custom or which arise from oral or written communications with you, which are not expressly contained in this Agreement. If any representations are of importance to you, you should ensure that they are expressly set out in the Engagement Letter before signature.

11.4. McGrathNicol's liability for any loss or damage suffered by you (whether direct, indirect or consequential) in connection with our engagement, including (without limitation) liability for any negligent act or omission or misrepresentation of McGrathNicol, shall be limited to two times the amount of professional fees paid to McGrathNicol in respect of the Services and you agree to release McGrathNicol from all claims arising in connection with the Services to the extent that McGrathNicol's liability in respect of such claims would exceed the amount of those professional fees.

11.5. To the extent permitted by law, you agree that to the extent that any loss or damage suffered by you is attributable to negligence, fault or lack of care on your part or on the part of any person for whom you are responsible, McGrathNicol is not liable (in contract, tort or otherwise) for the loss or damage.

11.6. Any claim in respect of this engagement shall be made in writing within six months of the completion date.

**12. Indemnities**

12.1. TO the maximum extent permitted by law, you agree to indemnify and hold harmless McGrathNicol against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by McGrathNicol in respect of any claim by a third party arising from or connected to any breach by you of your obligations under this Agreement.

12.2. McGrathNicol shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information provided by you or any of your representatives which is false, misleading or incomplete. You agree to indemnify and hold harmless McGrathNicol from any such liabilities we may have to you or any third party as a result of reliance by McGrathNicol on any information provided by you or any of your representatives which is false, misleading or incomplete.

12.3. In the event of any inconsistency between clauses 11 and 12, clause 12 shall prevail.

**13. Privacy**

13.1. McGrathNicol is committed to complying with the Privacy Act 2020 when collecting, holding or disclosing personal and sensitive information concerning your shareholders, members, customers, employees and other individuals with whom you have dealings ("stakeholders").

13.2. If your stakeholders have not been made aware of the possible collection, holding, use or disclosure of their personal and sensitive information by McGrathNicol as part of the provision of the Services, you agree to inform McGrathNicol so that should this be necessary, McGrathNicol may take action to raise the awareness of your stakeholders about the same.

13.3. Each of McGrathNicol and the clients may process personal information for the purposes of any of:

- performing the Services;
- complying with any requirement of law, regulation or a professional body of which it is a member; or
- administering and managing its own business and services.



13.4. Each of McGrathNicol and the clients may transfer personal information shared with it to any of its affiliates or contractors or suppliers in relation to any of the purposes set out in clause 13.3. Some of these recipients may be located outside New Zealand. Each of McGrathNicol and the clients may disclose the personal information only where it has a lawful basis to do so and any appropriate contractual or comparable safeguards required by applicable data protection laws are in place to protect the personal information being disclosed.

**14. Force majeure**

14.1. If the performance of the Services by a party, is prevented or restricted by reason of fire, storm, flood, earthquake, war, labour dispute, transportation embargo, law, order, or directive of any government in matters relating to this Agreement, or any other act or condition beyond the reasonable control of that party, then the party is excused from such performance to the extent of the same, but will use their best efforts to avoid or remove the causes of non-performance and to cure and complete performance with the utmost dispatch.

**15. Governing law and jurisdiction**

15.1. This Agreement and all aspects of our engagement and our performance of the Services are governed by, and construed in accordance with, the laws applicable in New Zealand. Both you and we agree to irrevocably submit any disputes arising under this agreement to the exclusive jurisdiction of the Courts in New Zealand.

**16. Variation**

16.1. No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of signature of the Engagement Letter.



# Exhibit “B”

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**From:** Mark Iammartino <MIammartino@DSIConsulting.com>  
**Sent:** Thursday, February 16, 2023 2:11 PM  
**To:** Perlman, Jonathan E.; McIntosh, Elizabeth G.; Garno, Gregory M.  
**Subject:** FW: JLE Clarification

**Caution: External Email**

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Mark Iammartino  
**Senior Managing Director**  
**Development Specialists Inc.**  
10 S. LaSalle Street, Suite 3300  
Chicago, IL 60603  
+1.872.201.8329 | direct  
[Link to Bio and vCard](#)

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**From:** Conor McElhinney <CMcElhinney@mcnp.co.nz>  
**Sent:** Thursday, February 16, 2023 12:57 PM  
**To:** Mark Iammartino <MIammartino@DSIConsulting.com>  
**Cc:** colin.mccloy@xtra.co.nz; David Shaw <DShaw@mcnp.co.nz>  
**Subject:** Re: JLE Clarification

Yes, confirmed Mark.

Kind regards  
Conor

Conor McElhinney  
Partner, McGrathNicol  
+64 27 952 8680

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**From:** Mark Iammartino <[MIammartino@DSIConsulting.com](mailto:MIammartino@DSIConsulting.com)>  
**Sent:** Friday, February 17, 2023 6:55:01 AM  
**To:** Conor McElhinney <[CMcElhinney@mcnp.co.nz](mailto:CMcElhinney@mcnp.co.nz)>  
**Cc:** [colin.mccloy@xtra.co.nz](mailto:colin.mccloy@xtra.co.nz) <[colin.mccloy@xtra.co.nz](mailto:colin.mccloy@xtra.co.nz)>; David Shaw <[DShaw@mcnp.co.nz](mailto:DShaw@mcnp.co.nz)>  
**Subject:** JLE Clarification

Conor, could you please confirm the following:

“The fees and indemnity from JLE are restricted solely to JLE and not the Receivership, its holdings, or current equity holders. And, the Receiver is signing merely as an acknowledgment and not as a guarantor of any sort.”

Thank you.

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**Mark Iammartino**  
**Senior Managing Director**  
**Development Specialists Inc.**  
10 S. LaSalle Street, Suite 3300  
Chicago, IL 60603  
+1.872.201.8329 | direct  
[Link to Bio and vCard](#)

**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.

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**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION FOR AUTHORIZATION  
TO RETAIN INVESTMENT BANKER**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as court-appointed Receiver's (the "Receiver"), Unopposed Motion For Authorization To Retain Investment Banker (the "Motion"), and the Court having reviewed the file and the pleadings, being informed that the relief sought therein is unopposed, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** that:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to enter the engagement letter attached as Exhibit A to the Motion.

**DONE AND ORDERED**, in chambers at Miami, Florida, this \_\_\_ day of February, 2023.

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HONORABLE CECILIA M. ALTONAGA  
United States District Judge

*Copies furnished to counsel of record*