

**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.

**JOINT STATUS REPORT OF RECEIVER
AND JOINT OFFICIAL LIQUIDATORS OF LTD. FEEDER FUND**

Jonathan E. Perlman, Esq., this Court’s Receiver (the “**Receiver**”) over TCA Global Credit Fund, Ltd., an exempt Cayman Islands limited company (“**Ltd. Feeder Fund**”) and all other TCA “**Receivership Entities**”¹ in the above-captioned action (the “**Receivership Action**”), and Eleanor Fisher and Tammy Fu, as joint official liquidators (in such capacity, the “**JOLs**”) of Ltd. Feeder Fund in a winding up proceeding under the Cayman Islands Companies Act (2020 Revision), FSD Cause No.: 51 of 2020 (RMJ) (the “**Winding Up Proceeding**”), pending before the Financial Services Division of the Grand Court of the Cayman Islands (the “**Cayman Court**”), and as foreign representatives (the “**Foreign Representatives**”) of Ltd. Feeder Fund in a case under Chapter 15 of the United States Bankruptcy Code pending before this Court as Case No. 21-cv-21905-CMA (the “**Chapter 15 Case**”), respectfully submit this Joint Status Report as directed by

¹ The “**Receivership Entities**” are TCA Fund Management Group Corp. (“**TCA FMGC**”), TCA Global Credit Fund GP, Ltd. (“**TCA GP**”), TCA Global Credit Master Fund, LP (the “**Master Fund**”) TCA Global Credit Fund, LP (“**LP Feeder Fund**”), TCA Global Credit Fund, Ltd. (“**Ltd. Feeder Fund**”) (Master Fund, together with the LP Feeder Fund and Ltd. Feeder Fund, are the “**Funds**”), and TCA Global Lending Corp. (“**TCA Global Lending**”).

the Court's *Order on Withdrawal of Reference* [Chapter 15 Case, ECF No. 7] (the "**Withdrawal Order**") and state as follows:²

GENERAL BACKGROUND

A. Commencement of the Receivership Action and Appointment of the Receiver

1. On May 11, 2020, the Securities and Exchange Commission (the "**SEC**") filed a Complaint for Injunctive and Other Relief instituting this Receivership Action (the "**SEC Complaint**"). [ECF No. 1]. The SEC Complaint alleges that certain representatives of TCA FMGC and TCA GP schemed to inflate the Funds' asset values and performance returns. [*Id.*]. Concurrent with the SEC Complaint, the SEC filed an Expedited Motion for Appointment of Receiver the same day (the "**Motion for Appointment**"). [ECF No. 3]. The SEC also filed an Unopposed Motion for Entry of Judgment (the "**Unopposed Motion for Judgment**") and Notice of Partial Settlement (the "**Notice of Settlement**"). [ECF No. 6]. The Notice of Settlement provided notice to the Court that the SEC, prior to filing the SEC Complaint, entered into a settlement with TCA FMGC, TCA GP, LP Feeder Fund, Ltd. Feeder Fund, and the Master Fund, whereby the Receivership Entities consented to (a) the jurisdiction of the Court, (b) the appointment of the Receiver, and (c) the entry of an injunction as stated in the Unopposed Motion for Judgment against them that prohibited further violations of securities laws. [*Id.*].

2. On May 11, 2020, the Court entered the Appointment Order, appointing the Receiver to oversee the administration, operation, and liquidation of the Receivership Entities for the benefit of investors and other creditors. [ECF No. 5]. As set forth in more detail in the

² All terms not specifically defined in this Joint Status Report shall have the same meaning ascribed to them in the Appointment Order, the May 18, 2020 First Expansion Order [ECF No. 16], and the *Stipulated Joint Motion for (I) Withdrawal of Reference of Chapter 15 Case and (II) Entry of Agreed Order Granting Recognition of Foreign Nonmain Proceeding and Incorporated Memorandum of Law* (the "**Stipulated Withdrawal Motion**") [Chapter 15, ECF No. 1].

Appointment Order, the Court granted the Receiver full and exclusive power, duty, and authority to administer, manage, and wind down the business affairs, funds, assets, and any other property of the Receivership Entities, as well as to marshal and preserve all of the assets of the Receivership Entities (the “**Receivership Assets**”) to distribute to investors and other creditors of the Receivership Entities. [*Id.*]. Upon being appointed, the Receiver immediately began to take the actions required by the Appointment Order.

3. On May 12, 2020, the Court entered a Judgment of Permanent Injunction and Other Relief against the Receivership Entities prohibiting any violations of the Securities Act, Exchange Act, and Advisers Act (the “**Permanent Injunction**”). [ECF No. 7]. The Court ruled based in part on the Consent of the Receivership Entities and thereby incorporated the consent of the Receivership Entities to the jurisdiction of the Court and appointment of the Receiver into the Permanent Injunction and Appointment Order. [*Id.* at pgs. 7-8]. The Court also incorporated into the Permanent Injunction the consent of the Receivership Entities for the Court to impose disgorgement of ill-gotten gains, prejudgment interest, and/or civil penalties against the Receivership Entities at a later date. [*Id.*].

B. Commencement of the Winding Up Proceeding and Appointment of JOLs

4. On April 1, 2020, Banque Pictet & Cie, S.A., asserting a redemption claim of \$11,641,899.40 against Ltd. Feeder Fund, filed a petition in the Cayman Court (the “**Banque Pictet Petition**”) under the Cayman Islands Companies Act (2020 Revision) (the “**Cayman Companies Act**”). The Banque Pictet Petition requested that the Cayman Court provide for the winding up and liquidation of Ltd. Feeder Fund, and sought the appointment of Eleanor Fisher and Tammy Fu as JOLs of Ltd. Feeder Fund.

5. On May 13, 2020, the Cayman Court held a hearing and entered its Winding Up

Order (the “**Winding Up Order**”), which (1) ordered that Ltd. Feeder Fund be wound up and liquidated in accordance with the Cayman Companies Act, and (2) appointed the JOLs as joint official liquidators of Ltd. Feeder Fund. [Winding Up Order ¶¶ 1-5].

C. Commencement of the Chapter 15 Case and Recognition of the Foreign Representatives

6. On February 16, 2021, the JOLs filed the *Verified Petition for Recognition of Foreign Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C.A. §§ 1515, 1517, and 1520* (the “**Chapter 15 Petition**”) seeking recognition of the Winding Up Proceeding as a foreign main proceeding, or alternatively a foreign nonmain proceeding, under Chapter 15 of the Bankruptcy Code. The Chapter 15 Petition asserts, “the JOLs require that the Court grant recognition to the Winding Up Proceeding . . . in order that [the JOLs] may appear and be heard in the [Receivership Action] in the District Court under section 1509(b).” [*Id.* at ¶ 3]. Also, as the Court found in the Withdrawal Order, the JOLs filed the Chapter 15 Petition “primarily to promote cooperation between themselves and the Receiver, and to enable the JOLs to intervene and be heard in the Receivership Action with respect to issues affecting Debtor,” [Withdrawal Order at p. 1], and otherwise fully discharge their obligations to the Cayman Court and the stakeholders of Ltd. Feeder Fund.

7. After extensive negotiations, the Receiver and JOLs agreed to recognition of the Winding Up Proceeding as a foreign nonmain proceeding to the extent and for the purposes set forth in the Recognition Order. Accordingly, on May 20, 2021, the Receiver and JOLs jointly moved to withdraw the reference of the Chapter 15 Case to this Court and requested recognition of the Winding Up Proceeding as a foreign nonmain proceeding. On June 4, 2021, the Court entered the Withdrawal Order and the *Agreed Order Granting Recognition of Foreign Nonmain Proceeding and Certain Related Relief* [Chapter 15 Case, ECF No. 8] (the “**Agreed Recognition**

Order”). Among other things, the Withdrawal Order directed the Parties to submit this Joint Status Report identifying the anticipated issues between the Parties in this Receivership Action and the Chapter 15 Case, and proposing scheduling deadlines where applicable.

JOINT STATUS REPORT

8. In the course of their discussions and communications leading up to the filing of this Joint Status Report, each of the Parties have identified certain issues that, absent an agreed resolution in the course of their ongoing negotiations, may arise and require resolution by the Court in the context of the Receivership Action and/or the Chapter 15 Case, as appropriate. Where possible, the Parties propose scheduling for summary proceedings relating to certain of those issues as set forth below.³ In an effort to avoid imposing artificial deadlines on their ongoing discussions to resolve these and other related issues, the Parties have agreed not to propose filing deadlines in this Report, with the expectation that absent agreement and/or Court Order to the contrary, the filing and service of any opposing and reply memoranda shall be governed by the provisions of Local Rule 7.1(c) of this Court.

9. The Parties believe that some or all of the following issues may require the Court’s attention:

- a) Whether the Court should adopt for these proceedings the Judicial Insolvency Network’s Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (the “**JIN Guidelines**”) and related protocols to promote international cooperation between the Receiver and JOLs and to facilitate the fair and open administration of the Receivership Action and the Chapter 15 Case.

³ All of the issues identified in this Joint Status Report are offered without prejudice to the right of either party to amend, modify, limit, expand, or contest any such issue, as consistent with the terms of the Agreed Recognition Order. In addition, and without limiting the effect of any provision of the Recognition Order, neither party agrees that the enumeration of any anticipated issue(s) shall be deemed a stipulation, admission or acknowledgement by either party that the Court has jurisdiction to consider such issue(s), or that either party has standing to raise such issue, or that the relief sought by either party is meritorious or should otherwise be granted. The Parties will cooperate and attempt to address and resolve the above issues without motion practice or use of substantial judicial resources.

b) Whether the Court should order or provide for an alternate form of cooperation and communication, and the proposal of protocols governing such cooperation and communication, between the Parties and between this Court and the Cayman Court, including the nature and extent of the Parties' participation in any communications that may arise between this Court and the Cayman Court.

c) Whether, subject to consultation and advice of counsel after consideration of privileges and restrictions on disclosure of information, the Parties should enter into a common interest agreement or confidentiality agreement for the exchange of information, and whether, in the event that the Receiver and JOLs cannot agree to the exchange of information respecting Ltd. Feeder Fund, subject to appropriate privilege and confidentiality requirements, the Court should enter orders compelling the exchange of such information.

d) Whether and in what manner the Parties should coordinate in the investigation and pursuit of claims that may exist against third parties, including potential claims against investors, creditors, and service providers, whether such actions are subject to U.S., Cayman, or the law of another jurisdiction, whether such claims should be brought jointly or separately on behalf of Ltd. Feeder Fund, and whether the Receiver and JOLs are relieved of certain defenses that otherwise would be available to third parties in such actions prior to the appointment of either the Receiver or JOLS.

10. In addition to the issues identified in paragraph 9, the JOLs believe that the following issues may require the attention of the Court:

a) Whether the Receiver may continue to retain control over the entirety or part of approximately \$4.2 million that was on deposit in an account in the name of Ltd. Feeder Fund at Butterfield Bank (Guernsey) Limited (the "**Guernsey Funds**"), or under applicable principles of law and equity, should release all or a portion of the Guernsey Funds or other funds held by or for the benefit of Ltd. Feeder Fund to the JOLs.

b) Whether any funds retained by the Receiver of Ltd. Feeder Fund shall be distributed through this Receivership Action or in the Winding Up Proceeding before the Cayman Court.

c) Issues that may arise as related to the duties, responsibilities and authority of the Receiver and JOLs in connection with the Plan of Liquidation, claims administration process and distribution scheme to be proposed by the Receiver, including but not limited to:

i) Whether stakeholders in Ltd. Feeder Fund can or should be compelled to file claims in this Court as opposed to the Cayman Court;

- ii) Whether the law of the Eleventh Circuit or other applicable U.S. law, should govern the allowance and determine the character and priority of those claims;
- iii) Whether the Receiver or the JOLs should oversee and administer the distribution to stakeholders in Ltd. Feeder Fund; and
- iv) Whether the scheme governing that distribution, if any, to Ltd. Feeder Fund must comply with Ltd. Feeder Fund's governing documents and applicable law including the classification of claims and interests and attendant priorities established under the laws of the Cayman Islands.⁴

11. In addition to the issues identified in paragraph 9, the Receiver believes that the following issues may require the attention of the Court:

- a) Whether the application of Cayman law is incompatible and adverse to U.S. law and public policy in the proper, efficient, and fair administration and liquidation of Ltd. Feeder Fund and of the other Receivership Entities.
- b) Whether the application of Cayman law or the law of other foreign jurisdictions are incompatible or adverse to the interests of the stakeholders of Ltd. Feeder Fund and all the other Receivership Entities.
- c) Whether the JOLs must disclose or produce any agreements providing for liquidation and/or litigation funding to the JOLs for the administration and liquidation of Ltd. Feeder Fund.
- d) Whether the terms of any liquidation and/or litigation funding agreement or arrangement naming the JOLs as a party, are violative of the Appointment Order [ECF No. 5], the Expansion Order [ECF No. 16], or the Judgment of Permanent Injunction [ECF No. 7], whether such terms are incompatible or adverse to the interests of the stakeholders of all the Receivership Entities, and whether such terms are also incompatible or adverse to U.S. law and public policy.
- e) Whether distribution per Cayman law of Ltd. Feeder Fund or any of the other Receivership Entities is contrary to U.S. law and public policy and inconsistent with Eleventh Circuit authority or other applicable U.S. law.
- f) Whether any expansion of any powers not afforded to the JOLS by the Agreed Recognition Order are contrary to U.S. law and public policy, whether any acts taken affect the Appointment Order [ECF No. 5], the Expansion Order [ECF No. 16], or the Judgment of Permanent Injunction [ECF No. 7], whether such acts

⁴ The time frame likely to govern the presentation of these and other related issues to the Court is dependent upon the Receiver's filing of a Plan of Liquidation and motions seeking approval of a claims administration process and distribution scheme, as well as future negotiations between the Parties. By Order dated June 14, 2021 [ECF No. 152], the Court has extended the deadline for the Receiver to file a Liquidation Plan through and including November 1, 2021.

are limited by the Agreed Recognition Order, whether any other acts not expressly agreed in the Agreed Recognition Order would result in a denial or limitation of any relief requested by the JOLs.

g) Whether any issues the JOLs wish to raise constitute an expansion of powers or rights that are beyond, inconsistent with, or contrary to the Agreed Recognition Order or the best interests of the Receivership Entities and their stakeholders, and whether any such conduct, efforts, or actions that the JOLs wish to raise to expand the power or rights beyond those prescribed under Agreed Recognition Order are contrary to principles of equity, including with regard to equitable distributions.

h) Whether the appointment and post-appointment conduct, efforts or actions of the JOLs are violative of the Appointment Order [ECF No. 5], the Expansion Order [ECF No. 16], or the Judgment of Permanent Injunction [ECF No. 7], whether such conduct affects relief that the JOLs may seek, and what relief if any should be ordered respecting such conduct, efforts, and actions.

i) Whether any conduct, efforts or actions by the JOLs before the Cayman Court, this Court, or in the Chapter 15 case were violative of the Appointment Order [ECF No. 5], the Expansion Order [ECF No. 16], or the Judgment of Permanent Injunction [ECF No. 7].

12. The SEC retains the right to be heard on any issue raised by either the Receiver or the JOLs.

13. The Parties anticipate that other issues may arise, and as provided in the Agreed Recognition Order will meet and confer in accordance with Local Rule 7.1(a)(3)(A) and propose briefing schedules at the appropriate time. In the event that the Parties are able to resolve or further limit the issues before the Court, the Parties will promptly inform the Court and/or seek the approval of the Court as necessary and appropriate.

Dated: June 16, 2021

BAKER & MCKENZIE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2021, 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 this day on all counsel of record or pro se parties identified below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ John H. Genovese
John H. Genovese, Esq.