

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, JONATHAN E. PERLMAN’S, MOTION FOR APPROVAL
TO RETAIN COHNREZNICK CAPITAL MARKETS SECURITIES, LLC
AS INVESTMENT BANKER**

Jonathan E. Perlman, Esq., court-appointed receiver (the “Receiver”) over the Receivership Entities,¹ by and through undersigned counsel, hereby files this Motion For Approval To Retain CohnReznick Capital Markets Securities, LLC (“CRC”) as 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.

¹ 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].

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, P.A. , as permanent Receiver over the Receivership Entities (the “Appointment Order”) [ECF No. 5].

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 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 Entity, TCA Global Credit Master Fund, LP, is the 100% equity owner of TCA Microgrid Energy, LCC (FL), TCA Microgrid Energy, LLC (GA), and TCA EP World, LLC (collectively, d/b/a “Pivot Energy”). Pivot Energy develops solar energy projects, including community solar, small utility solar and private rooftop solar equipment installations. Pivot Energy is headquartered in Denver, Colorado and its primary business is shifting heavily towards community solar development with an intent on expanding the business model to include ownership of these new solar developments. As explained in the Receiver’s First Quarterly Status Report, Pivot Energy has had significant recent success, growing its revenue by almost 240% in 2019. *See* [ECF No. 48]. Pivot Energy is one of the Receivership Estate’s most valuable asset.

7. The Receiver has begun the process of executing the sales process of Pivot Energy, and all of the assets owned by Pivot Energy or the Receiver’s interests in Pivot Energy, as part of

the liquidation of receivership assets.

8. Accordingly, acting under the express authority of the Appointment Order, the Receiver has solicited CRC to assist in the sale of Pivot Energy and all of Pivot Energy's assets, or the Receiver's interests in Pivot Energy, which in his best judgment is highly experienced in its respective field and will best be able to assist the Receiver in carrying out his duties to maximize the value of Pivot Energy for the benefit of Receivership Estate and investors.

9. The Receiver, his Retained Professionals, including Development Specialists, Inc. ("DSI"), and Pivot Energy engaged in significant due diligence before retaining CRC. Specifically, Pivot Energy, DSI, and the Receiver interviewed five (5) different investment banking firms and considered proposals from each. Based upon the potential investment banking firms' experience in the solar market, Pivot Energy, DSI and the Receiver narrowed the choices down to two (2) investment banking firms. The Receiver ultimately preferred CRC because its proposal was economically more favorable, thereby maximizing the value of any sale to the Receivership Estate.

10. The Receiver seeks this Court's approval to retain CRC to act as its exclusive financial advisor in connection with the Receiver's efforts to sell Pivot Energy and the assets owned by Pivot Energy or the Receiver's interest in Pivot Energy.

11. CRC will provide a number of services as provided in the engagement letter, which is attached hereto as Exhibit "A," including: (1) preparing to market the transaction by formalizing a strategy for the marketing process, including analysis of safe harbor strategy, timeline, marketing collateral, and information and third-party report sharing with targeted buyers; (2) formalizing a sales process that includes two rounds with a Confidential Information Memorandum, financial model, and process letter provided to prospective buyers, as well as a non-binding Letter of Interest; (3) supporting investor due diligence, answering questions, and assisting with managing

the Q&A process; (4) facilitating meetings (including developing a management presentation to support these meetings) and site visits as appropriate with Pivot Energy's prior approval, and provide guidance on structure and value to buyers; (5) leveraging the competitive dynamic to drive more favorable deal terms and value from buyers; and (6) managing the M&A process from beginning to end, through closing of the deal.

12. Additionally, included in the terms of the engagement letter, Pivot Energy has the right to accept or reject any offer and any acceptance (or rejection) will also require approval of the Receiver, the SEC, and this Court.

13. CRC has requested a retainer of \$50,000.00, payable by Pivot Energy upon the later of (i) three (3) months of execution of the engagement letter, or (ii) ten (10) days after the approval of the engagement letter by this Court.

14. Additionally, as set forth in the engagement letter, the Receiver agrees to pay CRC a transaction fee (the "Transaction Fee") upon the completion of a transaction equal to the greater of (i) \$750,000 or (ii) the sum of the following:

- i. 3.5% of the portion of the Transaction Consideration (as defined in Exhibit A attached hereto) that is more than \$0 but less than \$30,000,000;
- ii. 4.0% of the portion of the Transaction Consideration (as defined in Exhibit A attached hereto) that is equal to or greater than \$30,000,000 but less than \$35,000,000, if any; and
- iii. 4.5% of the portion of the Transaction Consideration (as defined in Exhibit A attached hereto) that is equal to or greater than \$35,000,000, if any.

15. The minimum Transaction Fee of \$750,000 is only payable upon completion of the transaction and will be paid in full at closing only if the Transaction Consideration is greater than \$19 million with cash at closing in excess of \$15 million. If the transaction is less than the above benchmarks, only \$300,000 of the agreed minimum fee will be due at closing. The balance to be

paid within 12 months. Any portions of CRC's fee based on earn outs or escrowed amounts will be paid only when paid to the Receiver.

16. Moreover, CRC has agreed to follow the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission, and the obligation to indemnify CRC is limited only to Pivot Energy and specifically excludes the Receivership, its holdings, and the selling Receivership Entities.

17. CRC 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 approve the Receiver's retention of CohnReznick Capital Markets Securities, LLC under the terms and conditions set forth in Exhibit A to the Motion, and for such other relief as this Court deems just and proper.

CERTIFICATATION PURSUANT TO S.D. FLA. L.R. 7.1(A)(3)

Undersigned counsel hereby certifies that counsel for the Receiver conferred with counsel for the SEC on October 26, 2020, regarding the relief requested herein, and the SEC has no objection to the relief sought in the Motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 26th day of October, 2020.

/s/Gregory M. Garno
Attorney

Exhibit “A”

October 19, 2020

Tom Hunt, CEO
TCA Microgrid Energy, LLC (Pivot Energy)
1750 15th Street, Suite 400
Denver, CO 80202

RE: Advisory Services Related to the Sale of Pivot Energy

Dear Tom:

We are pleased to present this letter to confirm our understanding of the engagement of CohnReznick Capital Markets Securities, LLC (“CRC”) to act as exclusive financial advisor to **TCA Microgrid Energy, LLC, doing business as Pivot Energy** (the “Company”) with respect to the following: to (i) provide advisory services, including general business and financial analysis of the Company related to a proposed Transaction (as defined below), (ii) identify opportunities for a Transaction, (iii) advise the Company concerning opportunities for a Transaction, whether or not identified by CRC, and (iv) participate on the Company’s behalf in negotiations concerning a Transaction.

CRC is the independent affiliated investment bank of CohnReznick LLP. CRC is a registered broker-dealer and a member firm of Financial Industry Regulatory Authority (“FINRA”). Britta von Oesen, managing director, will lead this engagement. Any services requiring a securities license under this agreement will be conducted by FINRA licensed personnel. This letter represents an agreement (the “Agreement”).

Services. CRC has outlined below the scope of the engagement, process management, and strategy for successful execution. On the terms and subject to the conditions of this Agreement, the Company hereby engages CRC as their sole and exclusive financial advisor and CRC hereby accepts the engagement, and agrees to provide the following services (the “Services”):

1. Preparation to Market the Transaction.

CRC familiarizes itself with and analyzes the business, operations, properties, financial condition and prospects of the Company.

CRC works with the Company to formalize strategy for the process, including analysis of safe harbor strategy, timeline, marketing collateral, and information and third-party report sharing with targeted buyers.

CRC prepares (in consultation with the Company and for the Company’s approval) a comprehensive marketing collateral package including an executive summary, Confidential Information Memorandum (“CIM”), process letter and financial model, and compiles / manages the data room with the goal of optimizing value and structure and improving market positioning.

CRC assists the Company in finalizing a target list for potential buyers and reaches out to the market to gauge existing interest and appetite for the Transaction, having identified and agreed with the Company beforehand on the list of potential buyers to approach.

CRC assists the Company in evaluating project sales strategy prior to the Transaction, with a view towards maximizing Company value at Transaction close while also avoiding project timing or cash management complications.

CRC guides messaging related to Company ownership history and issues, based exclusively on information provided by the Company, and works to position the Company to effect a successful Transaction.

CRC provides Company with analysis and strategy as to project/Company valuations (based exclusively on information provided by the Company) if the Company (and/or new buyers) seek to own the Company's project pipeline post-Transaction.

CRC distributes the executive summary and Non-Disclosure Agreement ("NDA") template to the investor target list and facilitates NDA execution.

2. Sale Process.

Following NDA execution, the M&A process will be comprised of two rounds with the CIM, financial model, and process letter provided to prospective buyers in Round I.

Buyers provide a non-binding Round I Letter of Interest ("LOI") to CRC with indicative valuations and structures. CRC has follow-up discussions with buyers to gauge ability to meet proposed timeline, access to capital, risk of movements in pricing (testing assumptions) and overall execution risk.

CRC supports the Company in evaluating Round I bids, including analysis of potential deal structures and value drivers to bring a targeted and agreed upon number of buyers into Round II of the sale process. CRC will assess the relative merits of the offers received, seek clarifications where necessary, and summarize the interested buyers' appetite, including recommendations to assist the Company in determining which offer(s) are most appropriate to take forward to Round II.

During Round II, CRC will support investor due diligence, answer questions and assist with managing the Q&A process, facilitate meetings (including developing a management presentation to support these meetings) and site visits as appropriate with Company's prior approval, and provide guidance on structure and value to buyers (with the Company's direction).

CRC aims for Round II to end with buyer's submission of final binding bids and a markup of the Transaction documents or term sheet proposal for evaluation.

Liaise with the Company's counsel, representatives of the Receivership (as defined below), and other advisers as necessary throughout the process.

Provide structural, commercial and financial input into Transaction documents.

3. Documentation and Closing.

Once final bids are received, CRC will leverage the competitive dynamic to drive more favorable deal terms and value from buyers.

CRC to support the Company in evaluating proposals, preparing summaries and scenario analysis and any required board meeting materials.

CRC will advise on final bid negotiations with potential buyers and facilitate selection of an optimal buyer to work with.

CRC assists in structuring the Transaction and negotiating Transaction documents to ensure optimal structure and minimized risks to the Company.

CRC will provide support during confirmatory due diligence and documentation, facilitate regular update calls, and drive all parties to closing.

CRC manages the M&A process from beginning to end, from initial marketing through signing and closing.

CRC will provide affidavits of suitability, disinterestedness, and other required information from CRC necessary to support the drafting of a sale motion for submission to the United States District Court for the Southern District of Florida (Miami Division) (the "Court").

CRC will provide adequate support reasonably necessary for the Court process related to the Receivership.

Transaction. For purposes of this Agreement, a "Transaction" means any transaction or series or combination of transactions, other than in the ordinary course of business, whereby, directly or indirectly, the membership interests of the owners of the Company or all of or substantially all of the Company's assets are sold to a third party for cash consideration.

In order to allow proper coordination of CRC's efforts with respect to a possible Transaction, during the term of this engagement, neither the Company nor any of its representatives (other than CRC) will initiate discussions regarding a Transaction except in coordination with CRC. If the Company or its representative receives an inquiry regarding a Transaction, the Company or such representative will promptly advise CRC of such inquiry in order that CRC may evaluate the person making such inquiry and its interest in a Transaction and assist the Company, to the extent requested, in any resulting negotiations. As a part of this process, the Company, within fourteen (14) days of signing this letter, will disclose any third-party interest it has received over the past one (1) year based on the format outlined in Exhibit A hereto.

The Company and CRC confirm that the Transaction is intended to include limited representations and warranties provided to any buyer (e.g. as to title, authorization to sell and potentially certain business terms). All information provided to any potential buyer will have appropriate disclosures and disclaimers. Furthermore, the Company confirms to CRC that any purchase documentation will include a provision limiting a purchaser's recourse to breaches of

the representations, warranties, and covenants in the purchase agreement, with no recourse for any information provided other than by the representations and warranties in the purchase agreement.

4. Fees.

In consideration for the Services rendered by CRC hereunder, the Company will pay CRC as follows:

- A. Retainer: a nonrefundable retainer of \$50,000 (the “Retainer Fee”), payable upon the later of (i) three (3) months of execution of this Agreement, or (ii) ten days after approval of this Agreement by the Court; and
- B. Transaction Fee: A fee payable upon completion of a Transaction equal to the greater of (i) \$750,000, or (ii) the sum of the following:
 - i. 3.5% of the portion of the Transaction Consideration that is more than \$0 but less than \$30,000,000;
 - ii. 4.0% of the portion of the Transaction Consideration that is equal to or greater than \$30,000,000 but less than \$35,000,000, if any; and
 - iii. 4.5% of the portion of the Transaction Consideration that is equal to or greater than \$35,000,000, if any.
- C. Expansion of Scope: In the event the Company requires investment banking or other financial services that are materially beyond the Services listed above (e.g., a fairness opinion), then CRC reserves the right to request additional compensation of terms mutually agreed by the parties whereby the parties will draft an amendment to this Agreement.
- D. Expense Reimbursement: In addition, the Company will reimburse CRC upon demand for its reasonable and documented out-of-pocket expenses incurred in connection with its engagement hereunder (including travel or other expenses associated with obtaining Court approval or as required by the Receiver, as defined herein); *provided, however*, that the aggregate expenses reimbursed shall not exceed \$10,000 without the Company and Receiver’s prior consent. Further, as to this Section (4.D), CRC agrees and commits to abide by the Securities and Exchange Commission (“SEC”) guidelines on expense reimbursement including but not limited to the provision of documents to support expenses incurred, and the use of good judgment in incurring expenses so as to limit costs.

The Transaction Fee is contingent upon the consummation of a Transaction. In the event the Transaction Fee becomes payable hereunder, the Retainer Fee (and, if applicable, any portion of a break-up fee paid to CRC) shall be credited against the Transaction Fee. The Company shall have the sole and absolute right to accept or reject any offer received from a third party, provided, however, that the acceptance or rejection of any offer by the Company shall require the prior approval of the Receiver, the SEC, and the Court. Except

as otherwise specifically provided herein, the Transaction Fee shall be paid to CRC only if a Transaction is consummated.

In addition, if prior to the termination of the Term, a Transaction is not consummated, but the Company receives a “break-up” fee or any other payment as a result of the termination of a proposed Transaction or realizes any profits from the exercise of any options or warrants granted to the Company in connection with a proposed Transaction, then the Company will pay to CRC a fee equal to 25% of such fee, profit or other payment, payable in cash when any such amount is paid to the Company or when any such option or warrant is exercised upon receipt of any approval deemed necessary by the Receiver.

The “Transaction Consideration” for purposes of calculating a Transaction Fee means the gross value of all cash paid directly or indirectly by an acquiror to a seller or sellers in connection with a Transaction. Transaction Consideration also includes the aggregate principal amount of all Company indebtedness assumed or acquired, directly or indirectly, by the acquiring party or any of its affiliates in a Transaction or retired, defeased or otherwise cancelled in connection with the Transaction. Notwithstanding the foregoing, CRC acknowledges that indebtedness assumed or acquired related to Company project collateralized utility deposits shall not be considered part of the Transaction Consideration in calculating the Transaction Fee. Amounts paid into escrow and contingent payments in connection with any Transaction will be included as part of the Transaction Consideration. Such portion of the Transaction Fee relating to the escrow or contingent payments, including earnout payments, shall be paid by the Company to CRC at such time as the Company receives the actual Transaction Consideration to which such portion of the Transaction Fee is attributable, with the understanding that while certain fees owed to CRC may be received after closing as discussed herein, CRC will be paid a minimum payment of \$300,000.00 of its Transaction Fee at the closing of the Transaction. In the event that the Transaction Consideration is greater than \$19,000,000, and the cash paid by the buyer at the time of the closing of the Transaction is greater than \$15,000,000, CRC shall receive its full minimum Transaction Fee of \$750,000 at the time of the closing of the Transaction. If the minimum Transaction Fee is not paid in full at closing, CRC shall receive its full minimum Transaction Fee of \$750,000 within twelve (12) months of the closing of the Transaction.

The Transaction Fee shall be paid to CRC from the proceeds of a Transaction in whole dollars.

5. Access to Information. The Company shall make available to CRC all material information concerning the business, assets, operations, financial condition and prospects of the Company for the purpose of the engagement hereunder. The Company shall provide CRC with reasonable access to the Company’s officers, directors, employees, independent accountants, counsel and other advisors and agents as CRC reasonably requests. The Company represents that, to the best of its actual knowledge, all information furnished by it or on its behalf to CRC, at all times during CRC’s engagement will be accurate and complete in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made. The

Parties recognize that the Company may not be able to provide certain information to CRC from third parties that is protected under law or by non-disclosure agreements.

6. Reliance on Information. The Company recognizes and confirms that in advising the Company and completing its engagement hereunder, CRC will be using and relying on publicly available information and on other information furnished to CRC by the Company and other parties. The Company recognizes and confirms that CRC: (a) will use and rely on the information furnished by the Company, publicly available information, and information provided by third parties such as prospective buyers without having independently verified the accuracy of such information; (b) does not assume responsibility for the accuracy or completeness or reasonableness of such information; and (c) will not make an appraisal of any assets or liabilities of the Company or any potential buyer or any of their market competitors. In the event the Company requests an opinion, the Parties will amend this agreement to add the scope of that opinion and fee to be charged for rendering the opinion. Such opinion may be in such form as CRC shall determine, and, in any event, shall be limited to the fairness from a financial point of view of the consideration to be received in the Transaction, and shall not address the Company's underlying business decision to effect the Transaction.

7. Due Authorization. Each of the parties hereto represents and warrants, each to the other, that this Agreement has been duly authorized by its representative governing body and, if required by law or agreement, its shareholders, partners or members; and that this Agreement constitutes a valid and enforceable obligation of each of the parties in accordance with its terms. The Parties hereto acknowledge that Jonathan E. Perlman, Esq. was appointed as Receiver (the "Receiver") over 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 in the matter of Securities and Exchange Commission v. TCA Fund Management Group Corp, et, al. pending in the United States District Court for the Southern District of Florida (Miami Division) (Case No. 20-21964-CIV-ALTONAGA) and further acknowledge that the members/equity owners of the Company are either parties to the Receivership or affiliates of such parties. The Parties understand that the terms of this Agreement and all obligations of the Company hereunder must be approved by the Receiver, the SEC, and the Court. Upon execution of this Agreement the Company will work with the Receiver to promptly submit this Agreement to the SEC and the Court to obtain approval hereof, CRC will not be obligated to begin any work under the Agreement without receiving a copy of an Order of the Court confirming approval of the engagement of CRC.

8. Additional Services. CRC will not provide any legal, regulatory, accounting, appraisal, or tax advice, or develop any tax strategies, or provide any opinion for the Company. If the Company requests that CRC provide any services other than those Services expressly set out in Section 1, the Company and CRC will enter into an additional agreement that will set forth the nature and scope of such services, appropriate compensation and other customary matters, as mutually agreed between the Company and CRC. Any such additional agreement shall also require the approval of the Receiver, the SEC, and the Court.

9. Independent Contractor/No Fiduciary Relationship. The Company and CRC acknowledge and agree that CRC is acting as an independent contractor for, and is not a fiduciary of, nor will the engagement hereunder give rise to fiduciary duties to, the Company, the Receiver or otherwise. The Parties acknowledge that CRC is not assuming any duties or obligations other than those

expressly set forth in this Agreement and CRC agrees that nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party and CRC shall not, and shall not purport to, bind the Company or any of its affiliates to any commitment, understanding or arrangement. CRC is not an accounting firm. Any written definitive agreement governing a Transaction shall contain customary language that reflects that the other parties to the Transaction relied solely upon their own independent investigation and advice of counsel before deciding to enter into the contemplated Transaction.

10. Term. The term of CRC's appointment and authorization hereunder shall begin from the date this Agreement is executed by both Parties until terminated as set forth herein. Either party may terminate CRC's engagement hereunder and this Agreement at any time, without cause, by giving the other party at least 5 business days' prior written notice. CRC's engagement shall be concluded after the close of the Transaction and all Transaction Fees due to CRC have been paid by the Company. Any such termination of the Agreement shall not excuse the duties and obligations of the parties under Section 11 hereof.

11. Termination.

A. Termination by Company without Cause (as defined below) prior to the completion of CIM and Round I of the Transaction: If the Company terminates this Agreement without cause prior to the completion of the CIM and the commencement of Round I, then CRC shall be entitled to the Retainer paid to it by the Company. In such event, the Company shall owe no further financial obligations to CRC and there shall be no Tail Period. As used herein, Cause shall mean the occurrence of an event or series of events caused by the action or inaction of CRC, which results in detrimental impact to the Transaction or the Company, and which CRC is unable to promptly cure to the satisfaction of the Company, or upon Britta von Oesen no longer being employed by CRC or otherwise no longer leading this engagement.

B. Termination by Company without Cause after the completion of the CIM and Round I of the Transaction: If the Company terminates this Agreement without cause after the completion of the CIM and the commencement of Round I, then, the Company shall owe CRC a \$150,000 Termination Fee. This Termination Fee will be waived by CRC in the event the Company thereafter retains CRC to pursue alternative solutions at an equal or greater fee amount. If any Transaction is consummated or a binding commitment therefor is entered into within the 12-month period following the termination of this Agreement without cause after the completion of the CIM and the commencement of Round 1 (the "Tail Period"), then the Company shall pay the Success Fee to CRC at the closing of such Transaction, net of any Retainer Fee, break-up related fee, and Termination Fee previously paid, if one or more parties to the Transaction: (a) were originally identified or introduced by or through CRC; (b) made inquiry to the Company, its officers or directors with respect to a Transaction prior to or during the Term; or (c) engaged in discussions or negotiated with CRC with regard to a Transaction (each, a "Covered Person"). During the Tail Period, the Company shall notify CRC within 48 hours after any inquiries from a Covered Person with respect to a potential Transaction.

C. Termination by Company with Cause: If the Company terminates this Agreement with purported Cause at any point prior to the close of the Transaction, the Company will have no further financial obligations to CRC after the date of Termination, and there shall be no Tail Period.

D. Termination by CRC: CRC has the right to terminate this Agreement at any time. If CRC terminates this Agreement at any point prior to the close of the Transaction, the Company will have no further financial obligations to CRC after the date of Termination, and there shall be no Tail Period except as set forth in Section 17 below.

12. Survival. Upon the termination of this Agreement, only those provisions hereof that by their terms reflect the intention of the parties that they survive termination shall remain in full force and effect.

13. Indemnification. In consideration of CRC signing this Agreement and agreeing to perform Services pursuant to this Agreement and subject to review and approval of the SEC and the Court, the Company agrees to indemnify and hold harmless CRC from and against all claims, direct damages, losses and actual out-of-pocket reasonable expenses, including court costs and reasonable attorneys' fees (collectively, a "Claim") and, at CRC's option, will defend CRC against any Claim, regarding, related to and/or concerning CRC's provision of services to the Company under this Agreement other than Claims arising from CRC's own gross negligence, bad faith, or willful misconduct. The parties agree and acknowledge that the Company is solely responsible for this indemnification obligation and that the Receivership and its holdings, assets, affiliated entities, and agents, including the current equity holders of the Company, shall have no responsibility nor obligation related to or arising from the foregoing indemnification or any Claim.

This provision will survive the termination of this Agreement.

14. Limitation on Liability. CRC and the Company further agree that neither CRC nor any of its affiliates or any of its or their respective officers, directors, controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), employees, independent contractors or agents (each, a "CRC" Party) shall have any liability to the Company, its securityholders or creditors, or any person asserting claims on behalf of or in the right of the Company (whether direct or indirect, in contract, tort, for an act of negligence or otherwise) for any losses, fees, damages, liabilities, costs, expenses or equitable relief arising out of or relating to this Agreement or the Services rendered hereunder, except for losses, fees, damages, liabilities, costs or expenses that arise solely out of or are based solely on any action of or failure to act by a CRC Party and resulted solely from the gross negligence or willful misconduct of a CRC Party.

Notwithstanding the foregoing, the Company expressly agrees that CRC's liability to the Company, its owners, securityholders and creditors shall not exceed the amount of fees paid to CRC hereunder with the following caveat regarding insurance. To the extent CRC has liability insurance that covers any such claims against it, CRC will notify its carrier of the same and to the extent there is money available from CRC's insurance carrier that the carrier is amenable to contribute to any such resolution, CRC will make such funds available (noting that CRC cannot control whether its insurance carrier determines a claim falls within its insurance policy, CRC

will not be obligated to pursue any claim against its insurance carrier if a claim is denied and CRC has a deductible that may not be satisfied to provide for any funds to be paid from its insurance carrier).

This section will survive termination of this Agreement and sale of the Company.

15. Confidentiality. The parties agree to keep all confidential information disclosed to it by the other party confidential in accordance with the terms of the pre-existing NDA between CRC and the Company, dated May 14, 2020. CRC's duty of confidentiality owed to Company shall extend to Company's affiliates, the Receivership, and the Receivership affiliates. This section will survive termination of this Agreement in accordance with the terms of such NDA.

16. Scope. All opinions and advice provided to the Company in connection with this engagement are intended solely for the benefit and use of the Company and the Receiver as part of the Receivership in connection with the matters described in this Agreement, and accordingly such opinions or advice shall not be relied upon by any person or entity other than the Company and Receiver. The Company and Receiver will not make any other use of any such opinions or advice. In addition, none of (a) the name of CRC, (b) any advice rendered by CRC to the Company, or (c) any communication from CRC pursuant to this Agreement will be quoted or referred to in any report, document, release or other communication prepared, issued or transmitted by the Company, or any person controlled by the Company, without CRC's prior written consent, which consent will not be unreasonably withheld, with the exception of reports by the Receiver to the SEC or documents filed by with the Court by the Receivership.

17. Publicity. From the effective date hereof through the end of the Transaction herein, no Party shall, and each Party shall cause its affiliates not to, issue any public release or announcement concerning the transactions contemplated hereby without the prior consent of the other Party (which consent shall not be unreasonably withheld), except as such release or announcement may be required by applicable Law or the rules or regulations of any United States, or the Court, in which case the Party required to make the release or announcement (or the party whose affiliates are required to make such release or announcement) shall allow the other Party reasonable time to comment on such release or announcement in advance of such issuance to the extent reasonably practicable; provided, however, that after the transactions contemplated hereby have been made public, the Party shall be entitled to respond to questions in the ordinary course or issue any press release or make any other public statement that, in each case, is consistent with any public statement previously issued or made by either Party in accordance with the provisions of this Section 17.

18. Successors. This Agreement shall inure to the benefit of and be binding upon the Company and CRC and their respective successors and assigns, including, without limitation, any entity or individual that may acquire all or substantially all of the Company's assets and business or into which the Company may be consolidated or merged, and CRC, its successors and assigns, including, without limitation, any entity or individual that may acquire all or substantially all of CRC's assets and business or into which CRC may be consolidated or merged.

19. Entire Agreement/Counterparts. This Agreement constitutes the entire agreement of the parties and supersedes all prior understandings between the parties. This Agreement shall not be amended or modified except in a writing signed by all of the parties hereto. No delay or failure by either party in exercising any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement also may be executed by signature on facsimiles hereof or signatures transmitted electronically. This Agreement shall be binding upon, and shall inure to the benefit of, any successors, assigns, heirs and personal representatives of the parties to this Agreement and each of the Indemnified Parties.

20. No Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws and principals thereof, and, to the extent it involves any United States statute, with the laws of the United States.

22. Dispute Resolution. The parties hereby waive any trial by jury and any dispute related to this Agreement, the Transaction contemplated hereby, or any other matter contemplated hereby shall be settled by the Court.

23. Anti-Money Laundering (“AML”) and Customer Due Diligence (“CDD”) Compliance. (required by FINRA) U.S. federal laws and regulations, including, but not limited to, Section 326 of the USA PATRIOT Act of 2001, as amended, and regulations promulgated thereunder, require CRC to collect certain identification elements and perform certain subsequent screening (the “AML/CDD Search Process”) before engaging in investment banking engagements with the Company. Accordingly, upon the Company’s execution and delivery of this Agreement, the Company shall deliver to CRC a completed and signed form, as set forth in Addendum B attached to this Agreement (the “AML/CDD Form”), together with all applicable supporting documentation called for under the AML/CDD Form. After conducting the AML/CDD Search Process, CRC shall promptly notify the Company in writing if CRC determines in its sole discretion that it cannot provide the Services contemplated under this Agreement. In such event, this Agreement and CRC’s engagement with the Company shall be void and of no force or effect ab initio and all fees paid to CRC hereunder shall be refunded. The Parties acknowledge and agree that (a) the effectiveness of this Agreement is contingent upon CRC’s receipt of the AML/CDD Form and CRC’s satisfactory completion in its reasonable determination of the AML/CDD Search Process and (b) CRC shall not be responsible for any losses or damages (including, but not limited to, lost opportunities) that may result if this Agreement and CRC’s engagement hereunder are terminated for the Company’s or its beneficial owners’ failure to provide aforementioned AML/CDD Form or other required or information documentation upon request.

24. Headings. The headings of the sections of this Agreement are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

25. Severability. If any provision of this Agreement is held to be invalid or unenforceable by any judgment of a court of competent jurisdiction, the remainder of this Agreement shall not be affected by such judgment, and this Agreement shall be carried out as nearly as possible according to its original terms and intent.

26. Notice. All notices provided under this Agreement shall be in writing (including email) and shall be considered effective (a) when delivered personally or by email (without notice of delivery failure or delay) to the party for whom intended, or (b) seven business days following deposit of the same into the U.S. mail, prepaid and return receipt requested, or (c) one day after delivery by nationally recognized overnight carrier overnight service; addressed to the party at the address set forth below:

COHNREZNICK CAPITAL MARKET SECURITIES, LLC
210 California Street, STE 1425
San Francisco, California 94111
Attn: Britta von Oesen, Managing Director
E-mail: britta.vonoesen@cohnreznickcapital.com

TCA Microgrid Energy , LLC, dba Pivot Energy
1750 15th Street, Suite 400
Denver, CO 80202
Attn: Bret Labadie, Vice President, Capital Markets
E-mail: blabadie@pivotenergy.net

Copy to:

Legal@pivotenergy.net
If to Receiver:
Jonathan E. Perlman, Receiver
Genovese Joblove & Battista, P.A.
100 SE 2nd Street, Suite 4400
Miami, Florida 33131

with a copy to:
Greg Garno, Esquire
Genovese Joblove & Battista, P.A.
100 SE 2nd Street, Suite 4400
Miami, Florida 33131

27. Acknowledgement. The Parties understand and agree that this Agreement, the fees, costs, and terms negotiated herein are contingent on the SEC and the Court's approval. The Company and the Receiver agree to take timely action to seek such approvals in order to ensure timely receipt of and/or payment to CRC of all obligations owed to CRC under this Agreement.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this letter. We look forward to working with you on this Transaction.


Very truly yours,

COHNREZNICK CAPITAL MARKETS
SECURITIES, LLC

By: 
Title: Managing Director

Agreed and Accepted this 19th day of October, 2020.

TCA Microgrid Energy, LLC, doing business as Pivot Energy

By: 
Title: CEO

Authorization of the Engagement by the Receiver on behalf of the Receivership:

Jonathan E. Perlman in his capacity of Receiver

Date

EXHIBIT A

THIRD PARTY INTEREST RECEIVED WITHIN THE PAST TWO YEARS

Name and Contact of interest third Party:

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.

**ORDER GRANTING RECEIVER, JONATHAN E. PERLMAN'S,
MOTION FOR APPROVAL TO RETAIN COHNREZNICK CAPITAL
MARKETS SECURITIES, LLC AS INVESTMENT BANKER**

THIS CAUSE, having come before the Court upon Receiver, Jonathan E. Perlman's, Motion For Approval To Retain CohnReznick Capital Markets Securities, LLC as Investment Banker (the "Motion"). The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to retain CohnReznick Capital Markets Securities, LLC under the terms and conditions set forth in Exhibit A to the Motion.

DONE AND ORDERED, in chambers at Miami, Florida, this __ day of _____, 2020.

CECILIA M. ALTONAGA
United States District Judge

Copies Furnished to Counsel of Record