

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,
Defendants.

**RECEIVER'S MOTION TO AMEND
THE APPOINTMENT ORDER [ECF No. 5] IN CONNECTION WITH THE FILING
OF THE CHAPTER 15 PETITION FOR TCA GLOBAL CREDIT FUND, LTD.**

Jonathan E. Perlman, Esq., the court-appointed Receiver (“**Receiver**”) of the Receivership Entities in the above-captioned Receivership Action,¹ files this Motion to Amend (“**Motion to Amend**”) the Court’s *Order Granting Plaintiff Securities and Exchange Commission’s Unopposed Expedited Motion for Appointment of Receiver* (“**Appointment Order**”) [ECF No. 5] in connection with the filing by Eleanor Fisher and Tammy Fu, the appointed joint official liquidators (“**JOLs**”) of TCA Global Credit Fund, Ltd. (“**Feeder Fund Ltd.**”) (also a Receivership Entity), of 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* (“**Chapter 15 Petition**”) in this Receivership Action for final determination by this Court. In support, the Receiver states:

I. PRELIMINARY STATEMENT

Amending the Appointment Order related to the filing of the Chapter 15 Petition in this

¹ All terms not specifically defined in this Motion to Amend shall have same 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].

Receivership Action is proper because the Receivership Action and the Chapter 15 Petition concern the same entity and its same assets and liabilities: Feeder Fund Ltd. After months of extensive negotiations on how best to proceed, the Receiver and the JOLs have agreed that this Court is the proper forum to resolve all issues between the parties as triggered by the Chapter 15 Petition, as well as the scope of the JOLs' participation in this action.

Recently, the Receiver and the JOLs jointly filed a *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* (“**Stipulated Withdrawal Motion**”) before the United States Bankruptcy Court of the Southern District of Florida (“**Bankruptcy Court**”) Case No. 21-11513-RAM (“**Chapter 15 Case**”). In the Stipulated Withdrawal Motion, the Receiver and JOLs jointly stipulated to the entry of (1) an Agreed Order withdrawing the reference of the Chapter 15 Case to the District Court, before whom the Receivership Action is pending with respect to the same Receivership Entity that is subject to the Chapter 15 Case (“**Withdrawal Order**”), and (2) an Agreed Order Granting Recognition of Foreign Nonmain Proceeding and Certain Related Relief (“**Agreed Recognition Order**”) to the JOLs with respect to Feeder Fund Ltd. in accordance with the conditions set forth in the Agreed Recognition Order. On June 4, 2021, the Court entered (i) the Withdrawal Order [ECF No. 7 in Case No. 21-21905], and (ii) the Agreed Recognition Order [ECF No. 8 in Case No. 21-21905].

This Motion to Amend together with the Stipulated Withdrawal Motion, the Withdrawal Order, and the Agreed Recognition Order, are the fundamental components of the overall agreement between the parties to have this Court determine and resolve all issues presented by the Chapter 15 Petition in relation to this Receivership Action. Upon the filing of this Motion to Amend, the JOLs anticipate filing a motion to intervene in this action, to which the Receiver also

has agreed as consistent with the scope of the Agreed Recognition Order.

To provide for the consistent and efficient determination of the issues overlapping the Chapter 15 Petition and the Receivership Action, the Court should amend the Appointment Order (1) related to the filing of the Chapter 15 Petition and the withdrawal of the Chapter 15 Case to this Court consistent with the terms set forth in the Withdrawal Order, and (2) to address the issues presented by the Chapter 15 Petition consistent with the terms set forth in the Agreed Recognition Order.

II. BACKGROUND

A. The Appointment Order in this Receivership Action

1. On May 11, 2020, the Securities and Exchange Commission (“**SEC**”) filed a Complaint for Injunctive and Other Relief instituting the Receivership Action (“**SEC Complaint**”) [ECF No. 1]. Concurrent with the SEC Complaint, the SEC filed an Expedited Motion for Appointment of Receiver the same day (“**Motion for Appointment**”) [ECF No. 3]. In its Complaint, the SEC alleges that certain representatives of the Receivership Entities schemed to inflate the Funds’ asset values and performance returns [ECF No. 1].

2. The SEC Complaint alleges that the Receivership Entities engaged in deceptive conduct in violation of Section 17(a) of the Securities Act of 1933 (“**Securities Act**”), 15 U.S.C.A. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (“**Exchange Act**”), 15 U.S.C.A. § 78j(b), and Exchange Act Rules 10b-5, 17 C.F.R. § 240.10b-5; and TCA violated Sections 206(1), (2), and (4), and 207 of the Investment Advisers Act of 1940 (“**Advisers Act**”), 15 U.S.C.A. §§ 80b-6(1), 80(b)-6(4), and 80b-7, and Advisers Act Rules 206(4)-7 and 206(4)-8, 17 C.F.R. §§ 275.206(4)-7, 275.206(4)-8 [ECF No. 1 at ¶ 9].

3. The SEC Complaint also alleges that since 2010 and continuing through at least

November 2019, TCA engaged in artificially inflating the Master Fund’s revenue and the Funds’ NAV [*Id.* at ¶ 3]. TCA accomplished this through different revenue recognition practices, which involved the recognition of lending and investment fees of the Master Fund as revenue [*Id.* at ¶¶ 4-6]. These practices caused the Funds to report to investors that the Funds were profitable, with an ever-increasing NAV [*Id.* at ¶¶ 6-7]. The inflated asset values were also included in forms that TCA filed with the SEC [*Id.*].

4. Based on the allegations in the SEC Complaint and Motion for Appointment of Receiver, on May 11, 2020, this 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]. The Court granted the Receiver full and exclusive power, duty and authority to administer and manage the business affairs, funds, assets, and any other property of the Receivership Entities, as well as marshal and preserve all of the assets of the Receivership Entities (“**Receivership Assets**”) [*Id.* at ¶¶ 1, 4-7, 16-17].

5. On May 11, 2020, the SEC filed an Unopposed Motion for Entry of Judgment (“**Unopposed Motion for Judgment**”) and Notice of Partial Settlement (“**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, GP, Feeder Fund LP, Feeder Fund Ltd., and the Master Fund whereby these Receivership Entities consented to the jurisdiction of this Court, the appointment of the Receiver, and the entry of an injunction as stated in the Unopposed Motion for Judgment against them that prohibited further violations of securities laws, among other things [*Id.*].

6. On May 12, 2020, this 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 (“**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. The Appointment of JOLs and Filing of the Chapter 15 Petition

7. On April 1, 2020, Banque Pictet & Cie, S.A., an investor in TCA Global Credit Fund, Ltd., filed a petition in the Cayman Court (the “**Banque Pictet Petition**”) in the Cayman Court 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 the Feeder Fund Ltd.

8. On May 13, 2020, the Cayman Court entered a Winding Up Order (“**Winding Up Order**” or “**Winding Up Proceeding**”), which (1) ordered that Feeder Fund Ltd. be wound up in accordance with the Cayman Companies Act and (2) appointed the JOLs over Feeder Fund Ltd. [Winding Up Order ¶¶ 1-5].

9. 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* (“**Chapter 15 Petition**”) before the Bankruptcy Court seeking recognition of the Cayman Winding Up Proceeding as a foreign main proceeding, or alternatively a foreign nonmain proceeding, under Chapter 15 of the Bankruptcy Code. Pursuant to the Chapter 15 Petition, the JOLs seek recognition as the foreign representative of Feeder Fund Ltd. (a

Receivership Entity) with the capacity to sue and be sued in all United States federal courts [Chapter 15 Petition at ¶ 33].

10. In the Chapter 15 Petition, the JOLs state, “[a]s a threshold matter, 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]. The JOLs also state that the Chapter 15 Case is “a necessary prerequisite in order for the JOLs to appear and participate in th[e] [Receivership Action] ... as Foreign Representative of the [Feeder Fund Ltd.],” including, without limitation, on the issue of the Guernsey Funds. [*Id.* at ¶ 34].

11. Since the filing of the Chapter 15 Petition in the Bankruptcy Court, counsel for the Receiver has continued discussions with counsel for the JOLs to formulate an agreed protocol and process for the dual administration of Feeder Fund Ltd. in the Receivership Action and Chapter 15 Case as well as the resolution of the Chapter 15 Petition as it relates to the Receivership Action.

12. The Receiver has equally made all efforts to keep the SEC apprised of the negotiations with the JOLs, and has specifically shared all proposed filings with the SEC for review and approval. To date, the SEC has not objected to the agreed process for the resolution of the Chapter 15 Petition in the Chapter 15 Case and the Receivership Action.

13. Given that the issues and claims raised in the Chapter 15 Petition directly implicate the Receivership Action and the Appointment Order, the Receiver requests that this Court amend the Appointment Order in connection with the filing of the Chapter 15 Petition consistent herewith and the Agreed Recognition Order, as a means for this Court to address the overlapping issues in the Chapter 15 Petition and this Receivership Action as set forth in the Agreed Recognition Order.

III. ARGUMENT

14. “A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC v. Wells Fargo Bank, N.A.*, 848 F. 3d 1339, 1343-44 (11th Cir. 2017) (quoting *SEC v. Elliott*, 953 F. 2d 1560, 1566 (11th Cir. 1992)); *see also SEC v. Homeland Commc’ns Corp.*, No. 07–80802 CIV, 2010 WL 2035326, at *1-2 (S.D. Fla. May 24, 2010) (“In equity receiverships resulting from SEC enforcement actions, district courts have very broad powers and wide discretion to fashion remedies.”). “When a district court creates a receivership, its focus is to safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.” *SEC v. Vescor Cap. Corp.*, 599 F. 3d 1189, 1194 (10th Cir. 2010) (quoting *Libertie Cap. Group, LLC v. Capwill*, 462 F. 3d 543, 551 (6th Cir. 2006)).

15. Section VII of the Appointment Order imposes an injunction in respect of certain actions related to the Receiver, the Receivership Property and/or the Receivership Entities [ECF No. 5 ¶¶ 24-25] (the “**Injunction**”). In addition, Section VIII of the Appointment Order specifically stayed all Ancillary Proceedings and “all police or regulatory actions and actions of the Commission related” to the Receivership Action “until further Order of the Court” [ECF No. 5 ¶¶ 26-28] (the “**Stay**”). Further, Section XI of the Appointment Order provides that “[t]he provisions of Section VII (Staying of Litigation) bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings” [*Id.* at ¶40].²

16. Since the filing of the Chapter 15 Petition in the Bankruptcy Court, the Receiver and the JOLs have engaged in discussions to resolve the issues implicated by the Chapter 15

² The JOLs take the legal position that the filing of the Chapter 15 Petition does not constitute a violation of the Injunction or the Stay, and does not constitute “placing any of the Receivership Entities in bankruptcy proceedings”; however, the overall agreement reflected in the Agreed Recognition Order and advanced by this Motion obviates the need for the Court to address that issue.

Petition as well as the appropriate process to address such issues in the Chapter 15 Case and this Receivership Action. To initiate this process, the Receiver and the JOLs jointly requested the withdrawal of the reference of the Chapter 15 Case to the District Court, and further requested the assignment of that action to this Division of the Court in order to place the Chapter 15 Petition issues before this Court. The Receiver and the JOLs further stipulated to the entry of the Agreed Recognition Order, which outlines the heavily negotiated resolution of the Chapter 15 Petition in addition to the scope of the JOLs' participation in this Receivership Action. Pursuant to the Agreed Recognition Order, the Receiver and the JOLs stipulate and agree to (a) granting Chapter 15 recognition to the Winding Up Proceeding as a foreign nonmain proceeding with respect to Feeder Fund Ltd. as limited therein, (b) recognizing the JOLs as the "foreign representatives," as defined in 11 U.S.C.A. § 101(24), of Feeder Fund Ltd., and (c) granting relief to the JOLs in accordance with the conditions set forth in the proposed Agreed Recognition Order.

17. As a result of the foregoing and in furtherance of the agreed process of the parties, the Receiver requests that this Court amend the Appointment Order in connection with the filing of the Chapter 15 Petition consistent herewith and the Agreed Recognition Order. This limited relief is proper because the Receivership Action and the Chapter 15 Petition concern Feeder Fund Ltd. Amending the Appointment Order will provide for the consistent and efficient determination of the issues overlapping the Chapter 15 Petition and the Receivership Action.

IV. CONCLUSION

BASED UPON THE FOREGOING, the Receiver respectfully requests that this Court enter an Order³ (1) granting this Motion to Amend, (2) amending the Appointment Order in connection with the filing of the Chapter 15 Petition consistent herewith and the Agreed

³ A proposed order is attached to this Motion to Amend as Exhibit A.

Recognition Order, and (3) awarding such other relief as this Court deems just and proper.

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

The undersigned hereby certifies that counsel for the Receiver conferred with counsel for the SEC on June 8, 2021 regarding the requested relief and is authorized to represent that the SEC does not oppose the relief sought.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/DE Notification and/or U.S. Mail to all parties and notification of such filing to all CM/DE participants in this case on the 8th day of June 2021.

By: /s/ John H. Genovese

John H. Genovese, Esq.

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**ORDER GRANTING RECEIVER'S MOTION TO AMEND THE APPOINTMENT
ORDER [ECF No. 5] IN CONNECTION WITH THE FILING OF THE CHAPTER 15
PETITION FOR TCA GLOBAL CREDIT FUNDS, LTD.**

THIS CAUSE came before the Court upon Receiver Jonathan E. Perlman, Esq.'s Motion to Amend the Appointment Order [ECF No. 5] in connection with the Filing of the Chapter 15 Petition in the Receivership Action [ECF No. ____]. The Court having reviewed the Motion, and being otherwise fully advised, it is,

ORDERED AND ADJUDGED that the Motion is **GRANTED**. The Receivership Order is amended in connection with the filing by Eleanor Fisher and Tammy Fu, the appointed joint official liquidators (“JOLs”) of TCA Global Credit Fund, Ltd. (“**Feeder Fund Ltd.**”) (also a Receivership Entity in this action) of 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* (“**Chapter 15 Petition**”) for full and final determination in this Receivership Action.

DONE AND ORDERED in Miami, Florida this ____ day of June, 2021.

**CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE**

cc: Counsel of record