

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-21964-CIV-ALTONAGA/Goodman

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., et al.,

Defendants, and

TCA GLOBAL CREDIT FUND, L.P., et al.,

Relief Defendants.

**UNOPPOSED MOTION OF CAYMAN ISLANDS FOREIGN REPRESENTATIVES
(1) TO INTERVENE FOR LIMITED PURPOSES DESCRIBED IN CHAPTER 15
RECOGNITION ORDER,¹ AND (2) TO DISPENSE WITH REQUIREMENT OF
PLEADING, AND ACCOMPANYING MEMORANDUM OF LAW**

Non-parties Eleanor Fisher and Tammy Fu, as the joint official liquidators (in such capacity, the “**JOLs**”) of TCA Global Credit Fund, Ltd. (the “**Ltd. 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 (in such capacity, the “**Foreign Representatives**”) of the Ltd. Fund in a case under Chapter 15 of the United States Bankruptcy Code pending before this Court as Case No. 21-21905-CIV-

¹ Consistent with the Recognition Order (as defined hereinafter), Movants seek to intervene solely in that portion of this action involving the receivership over the property of the Receivership Entities, and not in respect of the claims asserted by the Securities and Exchange Commission (the “**SEC**”) or any relief sought by the SEC against any of the Defendants and Relief Defendants.

ALTONAGA (the “**Chapter 15 Case**”), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 24(b)(1), respectfully move this Court for leave (1) to intervene in the above-caption action (the “**Receivership Action**”) to the extent and for the purposes set forth in that certain *Agreed Order Granting Recognition of Foreign Nonmain Proceeding and Certain Related Relief* entered in the Chapter 15 Case (the “**Recognition Order**”),² and (2) to dispense with the requirement that this Motion be accompanied by a pleading setting out the claim or defense for which intervention is sought.

In support of the requested relief, the Foreign Representatives rely upon the following facts and substantial matters of law.

INTRODUCTORY STATEMENT

1. By way of this Motion, the Foreign Representatives seek the Court's approval and assistance in implementing their comprehensive agreement with the Receiver (as defined below) that included:

- Withdrawal of the reference of the Chapter 15 Case from the Bankruptcy Court to this Court;
- Assignment of the withdrawn Chapter 15 Case to this Division of the Court;
- Recognition of the Chapter 15 Case as a foreign nonmain proceeding, and entry of relief in that Case as set forth in the Recognition Order;
- Amendment of the Appointment Order to accommodate and eliminate any uncertainty regarding the filing of the Chapter 15 Case;
- Intervention by the Foreign Representatives in this Receivership Action, to the extent and upon the terms and conditions set forth in the Recognition Order.

² A true and correct copy of the Recognition Order is attached as **Exhibit “A”** hereto.

2. The first three of those objectives having been accomplished in the Chapter 15 Case, the Foreign Representatives now seek, **with the agreement of the Receiver and consent of the SEC**, to intervene in this Receivership Action upon the terms and conditions set forth in the Recognition Order.

GENERAL FACTUAL BACKGROUND AND PROCEDURAL HISTORY

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

3. 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**”) 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 Ltd. Fund.

4. On May 13, 2020, the Cayman Court entered a Winding Up Order (the “**Winding Up Order**”), which (1) ordered that TCA Global Credit Fund, Ltd. be wound up and liquidated in accordance with the Cayman Companies Act and (2) appointed the JOLs as joint official liquidators of the Ltd. Fund, TCA Global Credit Fund, Ltd. [Winding Up Order ¶¶ 1-5]. Pursuant to the Winding Up Order, the JOLs were vested with the following powers and responsibilities, among others:

- to collect, realize and distribute the assets of the Ltd. Fund to its creditors and, if there is a surplus, to the persons entitled to it,
- to take possession of, collect and get in the property of the Ltd. Fund and for that purpose to take all such proceedings as the JOLs consider necessary,
- to carry on the business of the Ltd. Fund so far as may be necessary for its beneficial winding up,
- to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company seal,

- to bring or defend any action or other legal proceeding in the name and on behalf of the Ltd. Fund, and
- to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.

[Winding Up Order ¶¶ 5 - 6; Cayman Companies Act, § 110(1)(a)].

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

5. On May 11, 2020, the 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**”), seeking the appointment of Jonathan E. Perlman as the Receiver (“**Receiver**”) over the Ltd. Fund as well as several related “**Receivership Entities**.”³ [ECF No. 3]. In its Complaint, the SEC alleges that certain representatives of TCA FMGC and TCA GP schemed to inflate the Funds’ asset values and performance returns. [ECF No. 1].

6. Based on the allegations in the SEC Complaint and Motion for Appointment of Receiver, this Court entered the Appointment Order on May 11, 2020, appointing the Receiver to oversee the administration, operation, and liquidation of the Receivership Entities for the benefit of investors and other creditors. The District 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**”). [Appointment Order at ¶¶ 1, 4-7, 16-17].

³ In addition to the Ltd. Fund, the “**Receivership Entities**” are TCA Fund Management Group Corp. (“**TCA FMGC**”), TCA Global Credit Fund GP, Ltd. (“**TCA GP**”), TCA Global Credit Fund, LP (“**Feeder Fund LP**”), TCA Global Credit Master Fund, LP (the “**Master Fund**”) (Master Fund, together with the Ltd. Fund and Feeder Fund LP, are the “**Funds**”), and TCA Global Lending Corp. (“**TCA Global Lending**”) (collectively, the “**Receivership Entities**” or “**TCA Entities**”).

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

7. 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* for recognition of the Cayman liquidation (“**Chapter 15 Petition**”) 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. The JOLs filed the Chapter 15 Petition to obtain recognition of the Winding Up Proceeding and of the JOLs as Foreign Representatives in order that they could appear and be heard in the Receivership Action before this Court.

8. After extensive negotiations, the JOLs and Receiver 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 JOLs and Receiver jointly moved to withdraw the reference of the Chapter 15 Case to this Court and thereafter jointly obtained entry of the Recognition Order on June 4, 2021. Among other things, the Recognition Order recognized the Chapter 15 Case as a foreign nonmain proceeding to the extent and for the purposes set forth therein and recognized the JOLs as Foreign Representatives.

ARGUMENT

A. The Court Should Grant the Foreign Representatives Leave to Intervene on a Permissive Basis Under Fed. R. Civ. P. 24(b)(1)

9. Fed. R. Civ. P. 24(b)(1) authorizes the Court to grant intervention on a permissive basis. As applicable here, Rule 24(b)(1) the grant of such intervention to “anyone . . . who . . . is given a conditional right to intervene by federal statute.” Fed. R. Civ. P. 24(b)(1).

10. The Foreign Representatives respectfully submit that such a “conditional right to intervene” is granted by section 1509(b) of the Bankruptcy Code, which provides that upon the grant of recognition in a Chapter 15 case under section 1517,

(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

(3) a court in the United States shall grant comity or cooperation to the foreign representative.

11 U.S.C. § 1509(b).

11. The “condition” to the right to “sue and be sued” and “apply . . . for appropriate relief” is the requirement that the foreign proceeding be granted recognition, as now has occurred pursuant to the Recognition Order. Consistent with the terms of that Order and the comprehensive agreement with the Receiver that led to its entry, the Foreign Representatives seek permissive leave to intervene under Rule 24(b)(1). In so doing, the Foreign Representatives note further that the stay provisions of the Appointment Order eliminate the right of any party in interest that has submitted to the jurisdiction of this Court to “sue and be sued” or “apply directly” to any other “court in the United States for appropriate relief.” As such, and again as contemplated by their agreement with the Receiver, the only meaningful way to give effect to the rights of the Foreign Representatives under section 1509(b) is to permit their intervention in this action under Rule 24(b)(1).

B. The Court Should Grant the Foreign Representatives Relief From the Requirement of Filing a Pleading Along With This Motion to Intervene

12. As described above, the Foreign Representatives seek leave to intervene in the Receivership Action upon the same terms and conditions that are set forth exhaustively in the Recognition Order, so as to protect the legal and equitable interests for which they were

appointed by the Cayman Court as JOLs. While recognizing the literal requirement of Fed. R. Civ. P. 24(c) that this Motion “be accompanied by a pleading⁴ that sets out the claim or defense for which intervention is sought,” the Foreign Representatives respectfully request that ample authority exists for the Court to dispense with that requirement in the circumstances of this case.

13. It is well established in the Eleventh Circuit that a court can grant leave to intervene despite a lack of formal compliance with the pleading requirement of Rule 24(c), so long as the non-compliance does not cause prejudice to other parties. *Piambino v. Bailey*, 757 F.2d 1112, 1120–21 (11th Cir. 1985) (following “majority of circuits” in disregarding “nonprejudicial technical defects” and affirming that intervention without filing of separate pleading containing claims for relief would “not work a manifest injustice.”). Indeed, Judge Tjoflat noted in *Piambino* that if intervention were not granted in accordance with a prior decision of the Court, “we will have worked manifest injustice on the [intervenor].” 757 F.2d at 1121.⁵ For the reasons set forth more fully above the same is true here, that denial of intervention would work a manifest injustice on the Foreign Representatives by failing to give full effect to the essential terms of their comprehensive agreement with the Receiver, and leaving them “on the outside [of this Receivership Action] looking in” notwithstanding the goals and objectives of that agreement.

⁴ A “pleading,” of course, includes only those species of complaints and answers identified in Fed. R. Civ. P. 7. Especially where, as indicated, intervention is sought only with respect to the Receivership Action and not in respect of the relief sought by the SEC in the Complaint in this action, the literal requirement that this Motion be accompanied by a “pleading” is inapposite.

⁵ In reliance on this long-standing precedent, Judge Ungaro rejected a Rule 24(c) challenge and granted intervention in *South Florida Equitable Fund LLC v. City of Miami, Fla.*, 2010 WL 2925958 at p.5, fn. 3 (S.D. Fla. 2010), noting that the objecting party “was not prejudiced by [the intervenor’s] procedural failure to comply with [the pleading requirement of] Rule 24(c).” *See also Securities and Exchange Commission v. Quiros*, Case No. 16-cv-21301-Gayles (S.D. Fla. 2016 (Order at ECF No. 94 granting unopposed leave to intervene in Receivership Action for limited purposes not including opposition to relief sought by SEC against defendants, without requirement of pleading as requested by Motion at ECF No. 92).

14. Given the circumstances, it should be self-evident here that no party in this case will suffer prejudice if the Foreign Representatives are permitted to intervene without the formality of including a Rule 7 pleading under Rule 24(c). The limited purpose of the proposed intervention is amply set forth in the Recognition Order which, as described in the filings leading up to entry of that Order in the Chapter 15 Case, is the product of extensive negotiations between the JOLs and the Receiver. **In addition, counsel for the Receiver has advised that the SEC consents to the proposed intervention for the limited purposes described in the Recognition Order.⁶**

WHEREFORE, the Foreign Representatives move for entry of an Order (A) granting leave to intervene as a party in interest in this Receivership Action to the extent and for the purposes more fully set forth in the Recognition Order entered in the Chapter 15 Case; (B) granting access to any and all pleadings, motions, responses and other court documents filed in this Action; (C) dispensing with the requirement that the instant Motion be accompanied by a pleading setting forth the claim or defense on which intervention is sought, and (D) affording them such other and further relief as may be lawful, equitable and just in respect of the foregoing subjects.

CERTIFICATION

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that undersigned counsel for the Foreign Representatives has conferred with counsel for the Receiver regarding the relief sought in this motion in a good faith effort to resolve the issues, and counsel for the Receiver has advised the undersigned that the Receiver and the SEC consent to the proposed intervention to the extent set forth in the Recognition Order.

⁶ In light of the agreement and consent of the Receiver and SEC, respectively, to intervention on the bases set forth herein, the JOLs have not raised other grounds upon which they might be granted leave to intervene to the

Dated: June 8, 2021

BAKER & MCKENZIE LLP

/s/ Mark D. Bloom

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extent described in the Recognition Order, but reserve the right to do so if necessary.

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 8th day of June 2021.

By: /s/ Mark D. Bloom
Mark D. Bloom

EXHIBIT “A”

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-21905-CIV-ALTONAGA

IN THE MATTER OF:

TCA GLOBAL CREDIT FUND LTD.,

Debtor in a Foreign Proceeding.

**AGREED ORDER GRANTING RECOGNITION OF FOREIGN
NONMAIN PROCEEDING AND CERTAIN RELATED RELIEF**

THIS CAUSE came before the Court upon 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 [ECF No. 1] (the “Stipulated Motion”) filed by Jonathan E. Perlman, the court-appointed receiver (the “Receiver”) for TCA Global Credit Fund Ltd. (the “Debtor”) in the civil action pending before this Court as Case No. 20-CIV-21964 (the “Receivership Case”),¹ in which the Debtor is named as a Relief Defendant, and supported by Eleanor Fisher and Tammy Fu, the duly authorized and appointed joint official liquidators (in such capacity, the “JOLs”)² of the Debtor in the Chapter 15 case pending in the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”) as

¹ The term “Receivership Case” applies solely to matters involving the receivership over the Receivership Entities (as defined herein) and does not apply to the claims asserted by the Securities and Exchange Commission or any relief sought by the Securities and Exchange Commission against any of the Defendants or Relief Defendants therein. Notwithstanding, the Securities and Exchange Commission has the right to appear and be heard in the Chapter 15 Case.

² In agreeing to the Stipulated Motion, the JOLs expressly have reserved their rights under section 1510 of the Bankruptcy Code, 11 U.S.C. § 1510, and appear specially through counsel for the sole purpose of obtaining the relief sought in this Stipulated Motion; provided that upon entry of this Order and the separate Intervention Order referenced and defined in paragraph 14 of this Order, the provisions of paragraph 10 of this Order shall apply.

Case No. 21-11513-RAM (the “Chapter 15 Case”).

As set forth in the Stipulated Motion, the Receiver and JOLs stipulate and agree to the entry of a series of Orders (a) amending, upon proper motion, that certain Order Granting Plaintiff Securities and Exchange Commission’s Unopposed Expedited Motion for Appointment of Receiver in this case [ECF No. 5] (as amended, expanded or re-issued, the “Receivership Order”) in connection with the Chapter 15 Case (the “Amendment Order”), (b) withdrawing the reference of the Chapter 15 Case to this Court (a “Withdrawal Order”); (c) granting recognition as set forth herein under Chapter 15 to the winding up proceeding (the “Winding Up Proceeding”) pending before the Grand Court of the Cayman Islands pursuant to the Cayman Islands Companies Act (2020 Revision) (the “Cayman Companies Act”) of the laws of the Cayman Islands (“Cayman Islands”) as a foreign nonmain proceeding with respect to the Debtor pursuant to section 1517(b)(2) of title 11 of the United States Code (the “Bankruptcy Code”); (d) recognizing the JOLs as the “foreign representatives,” as defined in section 101(24) of the Bankruptcy Code, of the Debtor with respect to the Winding Up Proceeding; (e) granting limited relief to the JOLs with respect to the recognition of the Winding Up Proceeding as a foreign nonmain proceeding; (f) upon recognition and motion, granting the JOLs leave to intervene and appear and be heard in the Receivership Case pursuant to Fed. R. Civ. P. 24(b); and granting such other and further relief as the Court deems just and proper. Having entered the Withdrawal Order as requested in the Stipulated Motion, the Court proceeds now to address the recognition and the limited relief sought in the Chapter 15 Case.

The Chapter 15 Case comes before the Court upon the form of a voluntary petition [Case No. 21-11513-RAM, ECF No. 1] and the Verified Petition for Recognition of Foreign Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520

[Case No. 21-11513-RAM, ECF No. 7] (collectively, the “Petition”) filed by the JOLs in the Bankruptcy Court, seeking recognition pursuant to section 1517(b) of the Bankruptcy Code. It appearing that the Court has jurisdiction to consider the Petition pursuant to sections 157(d) and 1334 of title 28 of the United States Code; and the Court having reviewed the Petition; and appropriate and timely notice of the filing of the Petition having been given; and no other or further notice being necessary or required; and the Court having determined that the Petition, the Stipulated Motion and all other pleadings and papers submitted to the Court establish just cause to grant the relief ordered herein in light of the Receivership Order as will be amended by the Amendment Order, and after notice and due deliberation therefor;

THE COURT HEREBY FINDS AND DETERMINES THAT:

- A. The Court has jurisdiction to consider this matter pursuant to sections 157(d) and 1334 of title 28 of the United States Code. Venue for this proceeding is proper before the Court pursuant to section 1410 of title 28 of the United States Code.
- B. On February 16, 2021, the JOLs commenced the Chapter 15 Case in the Bankruptcy Court pursuant to and in accordance with sections 1504 and 1515 of the Bankruptcy Code. Upon proper motion, the Court will amend the Receivership Order related to the filing of the Chapter 15 Case (“Amendment Order”). Pursuant to the Withdrawal Order, the Court properly withdrew the reference of the Chapter 15 Case.
- C. The JOLs are the duly appointed “foreign representatives” of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.
- D. In filing the Petition, the JOLs have satisfied the requirements of section 1515 of the Bankruptcy Code.
- E. The Winding Up Proceeding is a “foreign proceeding” pursuant to section

101(23) of the Bankruptcy Code.

F. As agreed by the JOLs and the Receiver in the Stipulated Motion and set forth below, the Winding Up Proceeding will be recognized by the Court as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code subject to the limitations contained in this Order.

G. Subject to the limitations contained in this Order, recognition of the Winding Up Proceeding as a foreign nonmain proceeding is appropriate to effectuate the purposes and objectives of Chapter 15, including cooperation between the courts of the United States and the courts and other competent authorities of foreign countries; advancing the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, investors and other interested entities, including the Debtor; and protecting and maximizing the value of the Debtor's assets. *See* 11 U.S.C. § 1501(a)(1), (3), (4). The limited relief granted hereby is authorized pursuant to sections 1515, 1517, and 1521 of the Bankruptcy Code.

H. All creditors, investors and other parties in interest, including the Debtor, are sufficiently protected in the grant of the limited relief ordered hereby, in compliance with section 1522(a) of the Bankruptcy Code, which relief is limited so as not to be inconsistent with the rights, powers and duties granted to the Receiver with respect to assets and liabilities of the Debtor within the territorial United States under the Receivership Order.

I. The relief granted here is specifically tailored to (i) foster cooperation between the Receiver and the JOLs in respect of the Debtor; (ii) avoid any interference with the rights, powers and duties granted to the Receiver under the Receivership Order with respect to assets and liabilities of the Debtor within the territorial jurisdiction of the United States; (iii) avoid duplication of effort between the Receiver and the JOLs; (iv) minimize the unnecessary expenditure of the

Receivership's resources; (v) provide a central forum in this Court for the resolution of issues between and among the JOLs, the Receiver and other parties in interest relating to the administration of the Debtor's assets and liabilities within the territorial jurisdiction of the United States; and (vi) provide a forum for the JOLs to be heard on any matters that have the requisite effect on the Debtor in the Chapter 15 Case and/or the Receivership Case, as appropriate, before this Court as more fully set forth in paragraph 8 below on matters other than Non-Debtor Matters (as defined below). Nothing in this Order is intended to impair or abridge the ability of the JOLs or the Receiver to appear and seek relief in courts outside the United States in furtherance of the respective rights, duties and responsibilities imposed upon the JOLs by the laws and regulations of the Cayman Islands; or upon the Receiver in furtherance of the rights, duties and responsibilities imposed upon him by orders of the Court, it being agreed that the JOLs and the Receiver reserve any and all rights that they have in connection therewith.

For the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Petition is **GRANTED** as set forth and limited herein.
2. The Winding Up Proceeding is granted recognition as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code with respect to the Debtor, and the effect of such recognition and the discretionary relief available upon such recognition under section 1521 of the Bankruptcy Code are limited as set forth herein.
3. The JOLs are the duly appointed foreign representatives of the Debtor within the meaning of section 101(24) of the Bankruptcy Code and are authorized to act on behalf of the Debtor within the territorial jurisdiction of the United States solely in accordance with the powers

and rights granted and as set forth in this Order and such other and further orders as may be entered by the Court consistent herewith; *provided however*, that in no event shall such powers and rights within the jurisdiction of the United States be inconsistent with or duplicative of any of the rights, powers and duties of the Receiver under the Receivership Order.

4. The JOLs' right to sue and be sued in a court in the United States, whether by virtue of their "right of direct access" to courts in the United States pursuant to section 1509(b)(1) or otherwise, shall be limited to proceedings before this Court; *provided however*, that in seeking relief from the Court, the JOLs shall be required, in addition to the other applicable requirements of this Order, to demonstrate to the Court, subject to the objection of the Receiver, the Securities and Exchange Commission, or other party in interest, why such relief is not inconsistent with or duplicative of any of the rights, powers and duties granted to the Receiver under the Receivership Order with respect to assets and liabilities of any Receivership Entity within the territorial jurisdiction of the United States. Consistent with the foregoing provision, absent consent of the Receiver or further order of the Court after the required meet and confer as set forth in paragraph 18 below, the JOLs shall not bring any action in any court in the United States in respect of a claim or cause of action owned or held by Debtor against any person or entity.

5. Pursuant to section 1521(a)(4) of the Bankruptcy Code, the JOLs may seek leave of the Court, subject to the objection of the Receiver and the Securities and Exchange Commission, to examine witnesses, take evidence, and seek the delivery of information relating to the Debtor's assets, affairs, rights, obligations, or liabilities, including such information as may be in the possession and custody of the Receiver; *provided* that such rights (i) do not interfere with or duplicate the efforts of the Receiver, and (ii) protect the assets of the Debtor or the interests of all stakeholders to the extent not already being protected by the actions of the Receiver.

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Notwithstanding anything herein or in Chapter 15 of the Bankruptcy Code to the contrary, no relief shall be granted to the JOLs under any subsection of Section 1521(a) if that relief is inconsistent with or duplicative of any of the rights, powers and duties of the Receiver under the Receivership Order.

6. For avoidance of doubt, and notwithstanding the foregoing paragraph 5, the JOLs shall have a right to be heard and seek relief in the Receivership Case regarding access to or control over (i) some or all of the funds on deposit in the Debtor's Receivership Account (the "Guernsey Funds") that were secured by the Receiver pursuant to the Receivership Order from a bank account titled in the name of the Debtor previously located at Butterfield Bank in Guernsey, and/or (ii) any other asset of the Debtor that was located outside the territorial jurisdiction of the United States as of the date of the Receivership Order and repatriated or domesticated back to the United States by the Receiver thereafter (the "Other Foreign Assets"). If the JOLs may seek such relief, the Receiver and the Securities and Exchange Commission shall have the right to oppose any such relief.

7. Notwithstanding any provision of Chapter 15 of the Bankruptcy Code, including section 1511, the JOLs shall not commence a voluntary or involuntary case with respect to the Debtor or any Receivership Entity under Chapter 7 or 11 of the Bankruptcy Code.

8. Nothing contained in this Order shall operate to preclude or impair the right of the JOLs to appear and be heard in this Chapter 15 Case or, as appropriate, the Receivership Case upon entry of the Intervention Order (as defined below), in respect of (i) any liquidation plan proposed by the Receiver for the Receivership Entities, including any proposed distribution scheme contained therein; and (ii) any issue that has a direct material impact on the Debtor, its assets or liabilities, or the respective rights and obligations of the JOLs and the Receiver in

connection therewith; *provided however*, that notwithstanding anything herein to the contrary, the JOLs shall not have a right to appear and be heard in respect of any issue relating to any other Receivership Entity or the assets or liabilities of any such other Receivership Entity unless that issue has a substantial and material adverse impact on the Debtor as outlined below. The JOLs shall have the burden of establishing (on a clear and convincing basis) any such substantial and material adverse impact on the Debtor, and no issue shall have a substantial and material adverse impact if the amount at issue in connection therewith is less than \$5,000,000, as reflected on the books and records of the applicable Receivership Entity as of the date of the Receivership Order. If and to the extent the Receiver asserts that such amount at issue is less than \$5,000,000, then the Receiver shall disclose such information to the JOLs during the applicable “meet and confer” required in paragraph 18 below.

9. In the event the JOLs meet their burden of establishing that any such issue has a substantial and material adverse impact on the Debtor, then in advancing any objection to the relief being sought by the Receiver in connection therewith, the JOLs will also be required to show that such relief is inconsistent with the business judgment rule that governs the acts and decisions of a receiver under the laws of the United States (of which rule the JOLs acknowledge the Receiver has the benefit); and for any proposed settlement or compromise of a claim or cause of action, that such settlement or compromise is not fair, reasonable and equitable. In no event shall the JOLs have a right to appear and be heard in respect of any of the “Non-Debtor Matters,” which for purposes of this Order shall mean (i) any activities undertaken in the ordinary course of business, or other activities for which the Receiver is not required to seek approval from the Court, even if the Receiver elects to seek Court approval of such activities; (ii) any actions of the Receiver or matters that occurred in the Receivership prior to the date hereof, other than with respect to the

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Guernsey Funds and the Other Foreign Assets as set forth in paragraph 6 above; (iii) the retention of professionals, staff, vendors or employees by the Receiver, or any compensation arrangements for such persons or entities; (iv) motions for approval of the payment of any fees or expenses by the Receiver for the Receiver or his professionals; and (v) motions of the Receiver for approval to assert claims or causes of action of the Debtor within the territorial jurisdiction of the United States, or in respect of claims or causes of action of any other Receivership Entity wherever located.

10. The JOLs and/or each of their respective successors, agents, representatives, advisors, and counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code; *provided, however*, that upon entry of this Order and the Intervention Order (as defined below), the JOLs and/or each of their respective successors, agents, representatives, advisors, and counsel shall be subject to the jurisdiction of the Court in connection with any matters involving the Debtor within the territorial jurisdiction of the United States or otherwise covered by this Order, including in respect of any matter for which the JOLs have a right to be heard and/or seek relief from the Court.

11. Nothing in this Order shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

12. The grant of foreign nonmain recognition to the JOLs and the Winding Up Proceeding as limited herein is the product of a stipulation reached between the Receiver and the JOLs as set forth in the Stipulated Motion. The parties have agreed to the provisions of the Stipulated Motion, and to the entry of this Agreed Order, in a mutual, cooperative effort to preserve and enhance the Debtor's receivership estate, and to avoid wasteful and expensive litigation over disputed issues, including (i) whether the Debtor's center of main interests, or COMI, is located in

the Cayman Islands or the United States; (ii) whether the Debtor has an establishment in the Cayman Islands; and (iii) whether the recognition of the Winding Up Proceeding as a foreign nonmain proceeding would otherwise provide the JOLs with any rights in respect of the Debtor within the territorial jurisdiction of the United States other than as specifically provided for herein. As a result, nothing contained in the Stipulated Motion, nor in the grant of foreign nonmain recognition as provided in this Order (i) shall constitute a finding or adjudication on the issues of “COMI” or “establishment” in this case or any other case, including in any other court in the United States or in connection with any ancillary case that may be commenced by the JOLs and/or Receiver in any court outside the United States; (ii) shall in any way diminish or impair the legitimacy or legal effect of the JOLs’ appointment by the Grand Court of the Cayman Islands; (iii) shall in any way diminish, impair or give greater weight to any of the arguments to be made by the JOLs or the Receiver in respect of the Court’s consideration of any matter brought before the Court, whether those arguments are based on the laws and regulations of the United States and/or the Cayman Islands or principles of international comity; or (iv) shall in any way enlarge or improve the entitlement or argument for relief of either the JOLs or the Receiver in respect of the Court’s consideration of any matter based on the grant of foreign nonmain recognition rather than foreign main recognition, including by reference to principles of international comity or cooperation that might otherwise have been applicable if such “COMI” or “establishment” findings had been made and this limited stipulated Order not entered.

13. Notwithstanding any provision of applicable law to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the JOLs are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the JOLs are authorized and empowered, and may, in their discretion and without further delay, take

any action and perform any act necessary to implement and effectuate the terms of this Order consistent with the terms hereof.

14. Upon motion, the Court will enter a separate order authorizing the JOLs to intervene and appear and be heard in the Receivership Case pursuant to Rule 24(b) of the Federal Rules of Civil Procedure (the “Intervention Order”) consistent with the terms hereof.

15. Unless specifically set forth in this Order or further order of the Court consistent herewith, the JOLs shall not have any other powers or rights in respect of the Debtor within the territorial jurisdiction of the United States, under Chapter 15 or otherwise.

16. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order and any requests for additional relief.


17. Except as set forth in or authorized by this Order, nothing contained herein shall amend or modify the Receivership Order or the rights, powers and/or duties of the Receiver thereunder, including in respect of the Debtor and its property located within the territorial jurisdiction of the United States.

18. In order to avoid any actions that are inconsistent with or duplicative of any of the rights, powers, and duties of the Receiver under the Receivership Order with respect to assets and liabilities of the Debtor located within the territorial jurisdiction of the United States, counsel for the parties shall meet and confer in accordance with Local Rule 7.1(a)(3) of this Court prior to seeking any relief in the Receivership Case or the Chapter 15 Case consistent with the terms hereof, and each such counsel shall respond promptly to any such request to meet and confer. Unless otherwise agreed by the Receiver and the JOLs or ordered by the Court, the deadlines to respond in opposition to any relief sought by the JOLs consistent herewith, or to any relief sought by the Receiver on which the JOLs have a right to be heard consistent herewith, shall be reduced to five

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(5) business days for a response and three (3) business days for a reply, if any. In addition, the Court *sua sponte* may deny any requested relief by either the JOLs or the Receiver that fails to include a certification as required under Local Rule 7.1(a)(3), without prejudice to the right to seek similar or related relief upon satisfaction of the requirements of that Rule.

DONE AND ORDERED in Miami, Florida, this 4th day of June, 2021.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-21964-CIV-ALTONAGA/Goodman

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., et al.,

Defendants, and

TCA GLOBAL CREDIT FUND, L.P., et al.,

Relief Defendants.

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF CAYMAN ISLANDS’
FOREIGN REPRESENTATIVES TO INTERVENE AND FOR RELATED RELIEF**

THIS MATTER comes before the Court upon the *Unopposed Motion of Cayman Islands Foreign Representatives (1) to Intervene for Limited Purposes Described in Chapter 15 Recognition Order, and (2) to Dispense with Requirement of Pleading, and Accompanying Memorandum of Law* [ECF No. ____] (the “Motion”).¹ In the Motion, the Foreign Representatives assert a right to intervene in the Receivership Action pursuant to Fed. R. Civ. P. 24(b)(1) to the extent and for the purposes set forth in the Recognition Order. The Motion represents and certifies that no party affected by the requested relief opposes the requested intervention for such extent and purposes. Having reviewed the Motion and noted the absence of objection by any affected party, and being otherwise fully advised, the Court finds the requested relief is proper. Accordingly it is

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is GRANTED; and
2. Eleanor Fisher and Tammy Fu, in their capacity as JOLs and Foreign Representatives, are granted leave to intervene and participate in the proceedings in this case for the limited purpose set forth in the Motion and the Recognition Order.
3. Upon the circumstances presented in the Motion, the Court will dispense with the requirement of a pleading setting out the claim or defense for which intervention is sought under Fed. R.Civ. P. 24(c).

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

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

¹ Capitalized terms used but not defined in this Order have the meaning ascribed to them in the Motion.