

Date Received: 1 April 20

Time Received: 8:30 am

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 51 OF 2020 ()

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF TCA GLOBAL CREDIT FUND, LTD.

WINDING UP PETITION



To the Grand Court:

The humble petition of BANQUE PICTET & CIE S.A. (the *Petitioner*), whose address is Route des Acacias 60, 1211 Genève 73, Switzerland, shows that:

INTRODUCTION

- 1 The Petitioner presents this petition for the winding up of TCA Global Credit Fund, Ltd. (the *Company*).
- 2 The Petitioner is a creditor of the Company in the total sum of US\$11,641,899.40 (the *Petition Debt*).
- 3 The Petitioner seeks the winding up of the Company pursuant to section 92(d) of the Companies Law (2020 Revision) (the *Companies Law*) on the grounds that the Company is unable to pay its debts.

BACKGROUND

- 4 The Company was incorporated on 12 March 2010 as an exempted company limited by shares with registered number 238193.
- 5 The Company's current registered office is care of Maples Corporate Services Limited, PO Box 309 KY1-1104, Uglund House, South Church Street, George Town, Grand Cayman, Cayman Islands.

- 6 At all times the Company operated as an investment fund whereby private investors would subscribe for redeemable preference shares in the Company which were redeemable at the instance of the investors on various dates, with the redemption price being calculated as a pro rata portion of the Company's net asset value (*NAV*) as at the redemption date.
- 7 The Company was marketed on the basis of and pursuant to the terms of various offering memoranda. Investments in the Company were governed by and subject to the terms of the relevant offering memorandum in force at the time an investment was made (as amended from time to time), the subscription agreements by which the Company contracted to allot shares to investors, the memorandum and articles of association of the Company, and the Sixth Amended and Restated Limited Partnership of TCA Global Credit Master Fund L.P. (a Cayman Islands exempted limited partnership).
- 8 The Petitioner made an investment of US\$10,000,000.00 in the Company on 1 August 2016 and was the registered holder of 4,960.3071 Class A Shares (the *Shares*). The Petitioner's investment was governed by and subject to the terms of an offering memorandum dated January 2018 (the *Offering Memorandum*) and a subscription agreement dated 21 July 2016 (in addition to the other documents listed at paragraph 7).
- 9 The Petitioner made its investment in the Company in a nominee capacity on behalf of Northshore Holdings Limited (the *Beneficial Owner*), a company incorporated in the Isle of Man with registration number 016968V whose address is Victoria Road, Douglas, Isle of Man, IM2 4DF. Accordingly the Beneficial Owner was the beneficial owner of the Shares, and is the beneficial owner of the Petition Debt.

The Redemption Request

- 10 The Offering Memorandum provides (at page 16) that shareholders may redeem all or any portion of their shares as of the last "Business Day" of any month by sending the Company's administrator, Circle Partners (the *Administrator*), a redemption request in writing.
- 11 The Petitioner sent a redemption request in writing to the Administrator on 30 September 2019 pertaining to the Shares (being the Petitioner's entire shareholding).

- 12 Pursuant to the Offering Memorandum, the redemption date applicable to the request was 31 October 2019 (the **Redemption Date**), and the Petitioner became a creditor of the Company on that date.
- 13 Payment was due no more than three business days after the publication of the NAV for the Redemption Date. The NAV for the Redemption Date was published on 27 November 2019; payment was therefore due on or before 2 December 2019.
- 14 The Offering Memorandum provides (at page 17) that the redemption price shall be the NAV of the shares being redeemed as of the applicable redemption date, less certain fees. The redemption price for the Shares was US\$12,935,443.78 (the **Redemption Price**).
- 15 The Company failed to make payment of the Redemption Price by 2 December 2019.

The Company's Proposed Payment Schedule

- 16 On 9 December 2019 the Administrator sent an email to the Petitioner informing the Petitioner that the Company had decided to pay the Redemption Price in 10 equal monthly instalments over the period 1 December 2019 to 1 September 2020 as per the following schedule (the **Payment Schedule**):

- 1 Dec 2019 – 1/10 of the redemption payment
- 1 Jan 2020 – 1/10 of the redemption payment
- 1 Feb 2020 – 1/10 of the redemption payment
- 1 Mar 2020 – 1/10 of the redemption payment
- 1 Apr 2020 – 1/10 of the redemption payment
- 1 May 2020 – 1/10 of the redemption payment
- 1 Jun 2020 – 1/10 of the redemption payment
- 1 Jul 2020 – 1/10 of the redemption payment

- 1 Aug 2020 – 1/10 of the redemption payment
- 1 Sep 2020 – 1/10 of the redemption payment

17 The Company was not contractually entitled to delay payment of the Redemption Price as per the Payment Schedule. In fact the Company was contractually obliged to pay the full redemption price within three business days of the relevant NAV being published (as per paragraph 12).

18 On 27 December 2019, the Company paid US\$1,293,544.38, representing the first instalment due under the Payment Schedule. No further payments have been made.

19 The Beneficial Owner wrote to the investment manager of the Company, TCA Credit Management Ltd, on 13 January 2020 in regards to the Payment Schedule and expressly reserved its right to claim for earlier payment of the Redemption Price.

The Company's Suspension of Redemptions

20 On 21 January 2020, the board of directors of the Company wrote a letter to all investors stating that it had approved the suspension of subscriptions, redemptions, the payment of redemption proceeds and the calculation of the NAV of the Company (the *Suspension Notice*).

21 Article 60 of the Company's Articles of Association permits the directors of the Company to suspend redemptions and *"the payment of any amount to a Redeeming Shareholder in connection with the redemption of Shares."* *"Redeeming Shareholder"* is defined as *"a Shareholder who has requested the redemption of part or all of his Shares in accordance with these Articles"*.

22 At the date of the Suspension Notice, the Petitioner was no longer a shareholder of the Company as it had become a creditor on 31 October 2019. The Petitioner therefore did not fall within the definition of *"Redeeming Shareholder"*. The Suspension Notice was accordingly not valid to suspend the Petitioner's right to receive payment of the Petition Debt, which remains due and payable in full.

GROUND OF INSOLVENCY: THE COMPANY IS UNABLE TO PAY ITS DEBTS

- 23 On 13 February 2020, the Beneficial Owner served a statutory demand on the Company at its registered office pursuant to section 93(a) of the Companies Law (the ***Northshore Statutory Demand***). The Northshore Statutory Demand demanded payment in the amount of US\$2,587,088.76, being the sum of the payments due on 1 January and 1 February 2020 under the Payment Schedule (as per paragraph 16).
- 24 The Northshore Statutory Demand expressly reserved the right to seek immediate payment of the Petition Debt, being the outstanding balance due on the Redemption Price (further to the previous reservation of rights to that effect which was made in the Beneficial Owner's 13 January 2020 letter (as per paragraph 19)).
- 25 The deadline for payment of the Northshore Statutory demand was 5 March 2020. The Company failed to satisfy the Northshore Statutory Demand or any portion of it by 5 March 2020.
- 26 On 5 March 2020, the Petitioner served a second statutory demand (the ***Pictet Statutory Demand***) on the Company pursuant to section 93(a) of the Companies Law. The Pictet Statutory Demand demanded payment in the amount of the Petition Debt.
- 27 The deadline for payment of the Pictet Statutory demand was 26 March 2020. The Company failed to satisfy the Pictet Statutory Demand or any portion of it by 26 March 2020.
- 28 In light of the Company's failure to satisfy the Pictet Statutory Demand, the Company is deemed to be unable to pay its debts pursuant to section 93(a) of the Companies Law.
- 29 Further and alternatively, the Company's failure to (i) pay the full Redemption Price on 2 December 2019 when due, (ii) to comply with the Payment Schedule, and (iii) satisfy the Northshore Statutory Demand proves that the Company is unable to pay its debts pursuant to section 93(c) of the Companies Law.
- 30 Accordingly, the Company may be wound up by this Honourable Court pursuant to section 92(d) of the Companies Law on the basis that it is unable to pay its debts.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- 1 The Company be wound up in accordance with the Companies Law.
- 2 Eleanor Fisher and Tammy Fu of Ernst and Young, PO Box 510, 62 Forum Lane, Camana Bay, KY1-1106, Cayman Islands be appointed as joint official liquidators of the Company (the *Liquidators*).
- 3 The Liquidators shall not be required to give security for their appointment.
- 4 The Liquidators shall have the power to act jointly or severally in their capacity as liquidators of the Company.
- 5 The Liquidators be authorised to take any such action as may be necessary or desirable to obtain recognition of the Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
- 6 The Liquidators be authorised to exercise all of the powers set out in section 110(2)(b) of the Companies Law and Part II of the Third Schedule thereof, without further sanction of this Honourable Court.
- 7 The Liquidators be authorised to exercise all of the powers set out in section 110(2)(a) of the Companies Law and Part I of the Third Schedule thereof, provided sanction of this Honourable Court is obtained.
- 8 No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.
- 9 No disposition of the property of the Company by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of Section 99 of the Companies Law.
- 10 The Liquidators be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them for the same.

- 11 The remuneration and expenses of the Liquidators shall be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners' Regulations 2018 (as amended) and Order 20 of the Companies Winding up Rules 2018 (as amended).
- 12 The Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
- 13 The Liquidators be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- 14 The costs of and incidental to the Petition be paid forthwith out of the assets of the Company as an expense of the liquidation.
- 15 Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated this 30th of March 2020



Harney Westwood & Riegels

Attorneys-at-Law for and on behalf of the Petitioner

NOTE: This Petition is intended to be served on the Company and the Cayman Islands Monetary Authority.

THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 3rd Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: KLP/MYB.053469.0001)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on *13th May, 2020* at 10:00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: 3459494296.