



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DONALD S. LAGUARDIA, JR.

Defendant,

v.

LR GLOBAL FRONTIER MASTER
FUND LTD., LR GLOBAL FRONTIER
FUND LTD. (offshore), LR GLOBAL
FRONTIER FUND LTD. (onshore),

Relief Defendants.

19-civ.-05895

**PROPOSED ORDER APPOINTING A DISTRIBUTION AGENT, DIRECTING
TURNOVER OF INVESTOR FUNDS TO COURT REGISTRY INVESTMENT
SYSTEM FOR DISTRIBUTION BY THE DISTRIBUTION AGENT,
AND RELATED RELIEF**

WHEREAS, on June 24, 2019, Plaintiff Securities and Exchange Commission (“Commission”) filed a complaint in this action (the “Complaint”), alleging that defendant Donald S. LaGuardia (“LaGuardia” or “Defendant”), through the unregistered investment adviser he controlled, L-R Managers (collectively with LaGuardia, the “Advisers”), perpetrated a scheme to defraud the LR Global Frontier Master Fund, Ltd. (“Master Fund”), and its two feeder funds, LR Global Frontier Fund, Ltd. (offshore) and LR Global Frontier Fund LP (onshore) (collectively, with the Master Fund, the “Frontier Funds” or the “Funds”), in violation of, among other laws, Sections 206(1), (2), and 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4)] (“Advisers Act”), and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder;

WHEREAS, on July 21, 2021, the Commission filed an amended complaint adding the Frontier Funds as relief defendants (the “Relief Defendants”);

WHEREAS, from approximately January 2016 through August 2017, Northern Trust HedgeFund Services LLC (“Northern Hedge”) and Northern Trust Global Fund Services Cayman Limited (“Northern Global”), which are indirect wholly-owned subsidiaries of the Northern Trust Corporation, acted as the fund administrator to the Funds (collectively, the “Fund Administrator”), and The Northern Trust Company acted and still acts as custodian for the Funds (the “Custodian”) (the Custodian, the Fund Administrator, and Northern Trust Corporation are collectively referenced herein as “Northern Trust”);

WHEREAS, the Master Fund, through its managing director, LaGuardia, entered into a custody agreement effective as of October 1, 2015, with the Custodian to establish and maintain a custody account to hold certain assets of the Master Fund (the “Custody Account” and with the assets of the Funds, the “Custody Account Assets”);

WHEREAS the Custody Account Assets belong to the Funds’ investors;

WHEREAS, as of June 16, 2022, Northern Trust estimates the value of the Custody Account Assets to be approximately \$886,360.20;

WHEREAS, claims by the Funds’ investors against the Custody Account Assets exceed \$2.2 million;

WHEREAS, Northern Trust contends that the custody agreement with the Master Fund does not give Northern Trust authority to transfer the assets held in the Custody Account without instructions from a party authorized to act on behalf of the Master Fund and/or a Court Order;

WHEREAS, on September 18, 2020, with the consent of the Fund Administrator, the Commission issued an Order instituting a cease-and-desist proceeding against the Fund

Administrator captioned *Northern Trust Hedge Fund Services, LLC, et al.*, Investment Advisers Act Release No. 5585 (Sept. 18, 2020) (the “Related C&D”);

WHEREAS, in the Related C&D, entered on consent by the Fund Administrator without admitting or denying the non-jurisdictional facts, the Commission found that the Fund Administrator was a cause of the Advisers’ violations of Section 206(2) and 206(4) of the Adviser’s Act and Rule 206(4)-8 thereunder, as described in the Commission’s Complaint; ordered the Fund Administrator to pay, in the aggregate, \$167,629 in disgorgement, prejudgment interest, and civil penalties; and created a Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002 so that the collected civil penalties could be added to collected disgorgement and prejudgment interest and distributed to harmed investors (the “Fair Fund”). The Fund Administrator has paid the ordered monetary relief in full; and

WHEREAS, in anticipation of distributing to harmed investors the Custody Account Assets, as well as the Fair Fund if transferred to this Court, the Commission has filed the present Motion for an Order: (1) directing Northern Trust to liquidate the securities in the Custody Account and transfer the liquidated assets and existing cash to the Court Registry Investment System (the “CRIS”) for the above-captioned action pursuant to 28 U.S.C. § 2041; (2) appointing Lain, Faulkner and Co., P.C. (“LainFaulkner”) as the Distribution Agent to work with the Commission staff to distribute all funds in the CRIS to investors of the Frontier Funds pursuant to a distribution plan to be approved by this Court; and (3) directing the Clerk of the Court to pay the tax obligations of the funds in the CRIS directly to the taxing authority without further Court Order upon a written request by the Distribution Agent (the “Motion”); and

WHEREAS Northern Trust and the Frontier Funds do not oppose the relief sought in the Motion; AND this Court having reviewed the Motion;

AND FOR GOOD CAUSE shown;

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED;
2. Subject to paragraph 5.b, below, The Northern Trust Company is directed to liquidate the Custody Account Assets and to transfer the liquidated assets and cash in the Custody Account to the Clerk of the United States District Court, Southern District of New York, for deposit in the CRIS pursuant to directions to be provided by the Commission staff in writing;
3. LainFaulkner is appointed the Distribution Agent (“DA”), to formulate and implement a distribution plan, in consultation with the Commission staff, to be approved by the Court.
4. Unless otherwise directed by the Court, Northern Trust will pay all fees and expenses of: (a) LainFaulkner related to the distribution; (b) LainFaulkner related to the activity described in 5.b, below; and (c) Lain Faulkner related to the tax administration of the CRIS.
5. The DA will, among other things:
 - a. work with the Commission to distribute the funds in the CRIS, including any transferred from the Related C&D, in accordance with a Court-approved distribution plan;
 - b. determine the tax liabilities (if any) of Northern Trust and/or the Custody Account Assets in connection with the maintenance, liquidation, and distribution of the Custody Account Assets to the CRIS, and make, or assist Northern Trust in making the appropriate filings, including tax returns. Any tax liabilities incurred by Northern Trust and arising from the liquidation or distribution of the Custody Account Assets to the CRIS in accordance with paragraph 2. above, will be paid from the Custody

Account Assets. Any tax liabilities incurred in connection with the maintenance of the Custody Account Assets properly collectible from the Custody Account Assets pursuant to the rules and regulations of the Internal Revenue Service and/or other applicable tax laws and regulatory authorities will also be paid from the Custody Account Assets, however LainFaulkner shall make a good faith effort to reduce or abate interest and/or penalty liability. LainFaulkner shall promptly calculate a reserve for the Custody Account tax liabilities assessed pursuant to this paragraph, and that amount shall be withheld from the transfer of funds to the CRIS (the "Reserve"). Any amount remaining in the Reserve subsequent to the payment of tax liabilities shall be promptly transferred to the CRIS;

- c. act as the Tax Administrator for the funds in the CRIS (the "CRIS Fund"), pursuant to Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, and satisfy the administrative requirements imposed by those regulations, including but not limited to (i) obtaining a taxpayer identification number, (ii) filing applicable federal, state, and local tax returns and arranging for the timely payment of taxes reported thereon out of the CRIS Fund, and (iii) satisfying any information, reporting, or withholding requirements imposed on distributions from the CRIS Fund, including but not limited to the Foreign Account Tax Compliance Act. All tax obligations shall be paid by the CRIS Funds, or reserved and withheld from distribution, prior to distribution.
- d. Upon request, the DA shall provide copies of all tax filings related to paragraphs 5.b. and 5.c., above, to the Commission's counsel of record; and

e. upon completing its duties as set forth herein, the DA will provide to the Commission's counsel of record for filing with the Court: (i) a final accounting in a form provided by the Commission's counsel of record, or information necessary to the completion of a final accounting, as appropriate and as requested by the Commission's counsel of record, including a record of all tax payments made by the CRIS Fund; and (ii) a final report summarizing its activities as DA and providing statistics related to the distribution, including, to the extent such information is or should be known to the DA, amounts disbursed to investors, amounts returned and/or not delivered or negotiated, outreach efforts on non-negotiated payments and the costs and results of the same, and statistics concerning payments made to individuals and entities.

6. The Clerk of the Court is directed to pay the tax obligations out of the CRIS Fund without further Court order upon written direction by the DA to do the same, with a copy of the request sent by electronic mail to the Commission's counsel of record;

7. The DA may be removed *sua sponte* by the Court or upon motion of the Commission or Northern Trust and replaced with a successor;

8. In the event the DA decides to resign, it will first give notice to the Court, the Commission and Northern Trust, and the resignation, if permitted, will not be effective until the Court approves the resignation and appoints a successor;

9. In the event that the DA resigns or is removed, the DA will cooperate with its successor to ensure that the successor can resume the activities described herein with minimal delay; and

10. The Court will retain exclusive jurisdiction over the distribution, including, but

not limited to, claims against the DA asserting liability for violation of any duty imposed by, this Order, a Court-approved distribution plan, or other Court order.

IT IS SO ORDERED

Dated: July 5, 2022



Stewart D. Aaron
United States Magistrate Judge