Rachael Kierych <rachael@rkgroup.law>

Fw: Fwd: Phoenix Holdco, LP - follow up and response to letter, dated April 28, 2023

1 message

Raza Khan <hiraza@yahoo.com> Thu, Jun 15, 2023 at 9:52 AM
To: Rachael Kierych <rachael@rkgroup.law>

On Wednesday, May 10, 2023, 13:55, Karoline Molberg <karoline.molberg@gmail.com> wrote:

FYI

---------- Forwarded message ---------
From: **Matthew Maron** <mmaron@aramphoenix.com>
Date: Wed, 10 May 2023, 22:47
Subject: Phoenix Holdco, LP - follow up and response to letter, dated April 28, 2023
To: Brian Gelber <bgelber@gelbergroup.com>, Carl Daniel Berthold <cd_berthold@yahoo.de>, Wepebe <wepebe@protonmail.com>, <andrew@chasemorefarm.co.uk>, <apatterson3@me.com>, <ccr34@yahoo.com>, <chris.dundon@gmail.com>, <david@chasemorefarm.co.uk>, <david1791@yahoo.com>, <dbalboa831@aol.com>, <karoline.molberg@gmail.com>, <keith6749@gmail.com>, <rvalani@gacapital.com>, w.p. berthold <wpb1911@gmail.com>
Cc: RV <rv@aramphoenix.com>, <vgarg1@gmail.com>

Dear LPs,

I write to you all both as a follow up to below, as well as in response to a letter sent by Karoline Molberg to the General Partner, dated April 28, 2023.

As an initial matter, the General Partner has not denied any request for financials. With respect to the audited financials for Phoenix Holdco LP (the "Partnership") for fiscal year 2020, such financials were prepared by the firm Moore Stephens Cayman Ltd ("Moore Cayman"), were filed with the Cayman Islands Monetary Authority (CIMA), and were provided to you and the Limited Partners.

Following Moore Cayman's preparation of the 2020 audited financials, Moore Cayman was acquired by another firm, MHA MacIntyre Hudson Cayman, and in late August 2022, it resigned as the Partnership's auditor. The Partnership thereafter sought to retain a new, CIMA-approved auditor to replace Moore Cayman, but had difficulty doing so. As a result, for fiscal year 2021, the Partnership submitted a request to CIMA for an exemption from the requirement that it file audited financials. The exemption request remains pending. The Partnership also anticipates submitting an exemption request for fiscal year 2022.

Nevertheless, the General Partner currently is working to engage a new, U.S.-based auditor to prepare audited financials for the Partnership for fiscal years 2021 and 2022, as well as any other financial reports as may be appropriate. As soon as such a firm has been engaged, I will let you and the Limited Partners know and provide an update for when audited financials for fiscal years 2021 and 2022 are expected to be available.

Best wishes,

Matthew Maron

Authorized Representative for Phoenix Cayman Ltd., the General Partner

On Wed, May 3, 2023 at 1:32 PM Matthew Maron <mmaron@aramphoenix.com> wrote:

> Dear LPs,
>
> I write as a representative of the General Partner (GP) in response to Raza Khan's email, dated April 22, 2023, and to provide an update regarding the status of the interpleader action – *U.S. Bank v. Triaxx Asset Management* (a/k/a the PIMCO action).
>
> With respect to the interpleader action, as some of you may already know, testimony concluded a few weeks ago. The parties are scheduled to submit their post-trial briefs and make closing arguments at the end of this month, after which the case will be decided by the Judge.
>
> Triaxx's position is that the pool of money at issue that currently is being held in escrow (approximately $11 million) should be paid to PRES. If the Judge determines that some or all of that money should be paid to PRES, the money will be used for appropriate purposes — including (so long as sufficient money is available) to make payments to the Partnership to fund distributions to the LPs (as money paid to PRES has been used to do in the past). As soon as any material developments occur in the interpleader action, I will send email updates to you, including when the Judge issues her decision.
>
> With respect to Mr. Khan's statements regarding discretionary bonuses, if and when additional money is paid to PRES (in connection with the interpleader action or otherwise), the GP or other appropriate party will evaluate how the money should be used — taking into account such factors as the amount of the incoming money and the amount of any accrued expenses that may need to be paid — and will make proper allocation decisions. No decisions have been made as of now (in the abstract) regarding how future incoming money will be used, and depending on the circumstances (including the amount of such monies), the money may well be used to pay accrued expenses and to fund distributions to the LPs without any of it being used to pay discretionary bonuses. As with developments in the interpleader action, I will update you on any future money received by PRES, as well as on how the money is used.
>
> With the exception of Geoff Witt, whom Mr. Khan referenced and for whom a documented basis existed to exclude him from Partnership benefits, all LPs have received the return of their capital investment, plus 8%, and will receive, to the extent PRES receives additional money sufficient to fund distributions to the LPs, what is due to them pursuant to the Partnership waterfall.
>
> If you have questions about any of the above or any of the other items in Mr. Khan's email (including (i) any of the prior monies that justifiably were paid to Vishal or Raja for the work they performed that was central to the Partnership's prior successes, or (ii) the purchase of ICP, which Mr. Khan apparently does not know, or is choosing to ignore, was structured the way it was in order to protect the interests of the Partnership and to further the goals of the Partnership), or any other items relating to the Partnership, please do not hesitate to contact me.
>
> As Mr. Khan has acknowledged, he has a long-running personal dispute with Vishal over EIFC, and his reaching out to you is an unfortunate by-product of that dispute. Please make no mistake, Vishal and Raja (as well as the other individuals referenced by name in Mr. Khan's email) have worked hard and in good faith over the years to advance the interests of the Partnership, and they continue to do so — including through their efforts to obtain a recovery in the interpleader action. I look forward to being in touch with updates about the interpleader action and the Partnership more generally. In the meantime, again, please do not hesitate to contact me if you have any questions.
>
> Best wishes,
>
> Matthew Maron

Authorized Representative for Phoenix Cayman Ltd., the General Partner

Rachael Kierych <rachael@rkgroup.law>

Fw: Fwd: Phoenix Holdco, LP - update

1 message

Raza Khan <hiraza@yahoo.com>
Thu, Jun 15, 2023 at 9:53 AM
To: Rachael Kierych <rachael@rkgroup.law>

On Wednesday, June 7, 2023, 23:18, Karoline Molberg <karoline.molberg@gmail.com> wrote:

Hi all - I think you were missed off the below email.

---------- Forwarded message ---------
From: **Matthew Maron** <mmaron@aramphoenix.com>
Date: Thu, 8 Jun 2023, 03:44
Subject: Phoenix Holdco, LP - update
To: Brian Gelber <bgelber@gelbergroup.com>, Carl Daniel Berthold <cd_berthold@yahoo.de>, Wepebe <wepebe@protonmail.com>, <andrew@chasemorefarm.co.uk>, <apatterson3@me.com>, <ccr34@yahoo.com>, <chris.dundon@gmail.com>, <david@chasemorefarm.co.uk>, <david1791@yahoo.com>, <dbalboa831@aol.com>, <karoline.molberg@gmail.com>, <keith6749@gmail.com>, <rvalani@gacapital.com>, w.p. berthold <wpb1911@gmail.com>
Cc: RV <rv@aramphoenix.com>, <vgarg1@gmail.com>

Dear LPs,

Attached for your review are bank statements for Phoenix Holdco, PRES and PSCI for 2021 and 2022. The audited financials for 2020 have already been provided. I invite any LP to reach out to me if you need statements from 2020.

Relatedly, as you might know, Phoenix Cayman Ltd., the existing General Partner ("GP"), sent an email to counsel for Blue Bear in response to the "Consent" document purporting to remove the existing GP. For reasons explained in the email, which is copied below for those of you who have not seen it, the "Consent" document is null and void.

Dear Mr. Woolf and Ms. Freeman,

I write as a representative of the existing General Partner (“GP”), Phoenix Cayman Ltd., in response to the document you circulated titled “Consent of a Supermajority in Interest of the Limited Partners of the Partnership” (the “Consent”), which purports to remove the existing GP for “Cause” (as defined in the Partnership Agreement), supposedly (i) in accordance with Section 6.1(d) of the Partnership Agreement and (ii) based on a “written

notice" dated April 28, 2023 (the "Written Notice"). For a variety of reasons, including but not limited to those set forth herein, the Consent is contrary to the terms of the Partnership Agreement and, thus, null and void. Accordingly, the existing GP remains the GP and will continue to execute faithfully its obligations under the Partnership Agreement, as it has done since the Partnership's inception.

The Consent purports to remove the GP for supposed breaches of its obligation to provide the Limited Partners ("LPs") with annual and quarterly financial statements for fiscal years 2021 and 2022. The Consent, however, like the Written Notice that preceded it (to which the GP promptly responded on May 10, 2023), ignores both the relevant terms of the Partnership Agreement and the relevant context. With respect to the Partnership Agreement's relevant terms, the GP is obligated to "use commercially reasonable efforts" to provide the relevant financial statements, and the GP can be removed for Cause only if it has engaged in a "knowing, willful and material breach" of the Partnership Agreement. The Consent fails to address either of these standards, which is reflective of its overall fatal defects.

Here, the GP cannot be deemed to have violated its obligation to "use commercially reasonable efforts" to provide financial statements, much less to have engaged in a "knowing, willful and material breach" of the Partnership Agreement. As an initial matter, as the GP explained in its response to the Written Notice, the LPs received audited financial statements for fiscal year 2020 — notwithstanding the false statement in the Written Notice that they had not. In addition, no request for audited financial statements by the LPs was denied by the GP — notwithstanding the false statements to the contrary in both the Written Notice and the Consent. Rather, as the GP's response to the Written Notice explained, the only reason why the LPs have not yet received audited financial statements for fiscal years 2021 and 2022 is because in late August 2022, the Partnership's long-time auditor, Moore Stephens Cayman Ltd ("Moore Cayman"), resigned (after it was acquired by another firm), and since then, the GP has been unable to retain a replacement auditor — despite a concerted effort on its part to do so. Indeed, since August 2022, the GP has diligently sought a replacement auditor. It has contacted multiple potential auditors, both in the Cayman Islands and the United States, and has had detailed discussions with each of them. Unfortunately, following those discussions, the firms declined to accept the engagement, but the diligent and documented efforts on the part of the GP establish both that it "use[d] commercially reasonable efforts" to provide the LPs with the relevant financial statements, and that it has not acted "willfully" in being unable to do so.

As the GP also explained in its response to the Written Notice, while the GP seeks to retain a replacement auditor, it has acted responsibly by submitting a formal request to its Cayman Island regulator, CIMA, for an exemption to the requirement that it obtain audited financials. The request remains pending with CIMA, and thus, contrary to the suggestion in the Consent, no action needs to be taken to address the Partnership's standing with CIMA.

Moreover, as has been made clear to the LPs through a variety of sources — including, but not limited to, the annual financial statements that they received for fiscal year 2020 and earlier years, as well as public filings in various ongoing litigations related to the Partnership — since the 2020 audited financial statements were prepared and distributed to the LPs, the Partnership has not received any money from any external source. Rather, the only money that the Partnership (or either of its subsidiaries) has received since 2020 is money that was contributed by one or more members of *the existing GP*. That money was contributed to enable the Partnership to pay certain expenses and, thereby, to continue to operate for the benefit of the Partnership as a whole — including the LPs. In other words, rather than seek money from the LPs, one or more members of *the existing GP* contributed the necessary money themselves. In any event, based on the lack of any external money coming into the Partnership during fiscal years 2021 and 2022, any financial statements prepared for those fiscal years would not have been materially different from the audited financial statements that the LPs received for fiscal year 2020 — and, therefore, would not have been material to a reasonable investor. Thus, any non-distribution of financial statements for fiscal years 2021 and 2022 (whether annual or quarterly) cannot be deemed a "knowing, willful and material breach," particularly when the GP was working diligently to retain an external auditor to prepare audited financial statements for those fiscal years.

Further, rather than expending the time and resources — which the Partnership did not have — to prepare what would have been immaterial unaudited financial statements, the GP instead appropriately opted to allocate its scarce resources to working with outside counsel on behalf of one of the Partnership's subsidiaries, Phoenix Real Estate Solutions ("PRES"), to pursue approximately $11 million in escrowed funds in the *U.S. Bank v. Triaxx Asset Management* case. As the GP previously has explained to the LPs, of the pools of money that theoretically remain available to the Partnership or its subsidiaries, the $11 million at issue in the *U.S. Bank* case is the most likely to be collected. Accordingly, for this additional reason, the GP's decision to focus and allocate its scarce resources to pursue the $11 million in escrowed funds (rather than on preparing immaterial financial statements) cannot possibly constitute a "knowing, willful and material breach."

Additionally, given that the Partnership (together with its subsidiaries) did not receive any money from any sources other than the members of the existing GP during fiscal years 2021 and 2022, it was not "commercially reasonable" for the GP to spend time and money preparing immaterial unaudited financial statements. Indeed, the implication of the Consent is that members of the GP not only should have contributed the money they did during fiscal years 2021 and 2022 to keep the Partnership operational, but that they also should have taken the "commercially [un]reasonable" step of contributing still more money to prepare immaterial unaudited financial statements.

Finally, in addition to being ineffectual for the reasons set forth above (among others), the purported effort to remove the existing GP is wrongheaded; the Consent itself reflects that it was spearheaded by counsel for the handful of LPs who currently are pursuing a variety of meritless claims against the existing GP and who plainly are seeking to further their own agenda rather than acting in the best interests of the Partnership. Indeed, given the extensive work that the existing GP has done in connection with the *U.S. Bank* case, the institutional knowledge that it has with respect to the underlying matters at issue in that case, and the current posture of the case, seeking to replace the existing GP now would not be in the best interests of the Partnership. The best course of action to maximize the likelihood of obtaining additional funds for the benefit of the Partnership is to allow the GP to continue its work in seeking to recover the $11 million at issue in the *U.S. Bank* case, which, as noted, represents the best opportunity for additional, potentially significant distributions to the LPs in the near term.

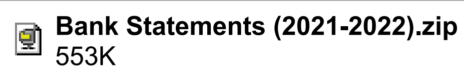
For the foregoing reasons, among others, the Consent fails to identify any plausible basis to remove the GP for Cause, and the Consent therefore is null and void. The GP therefore will continue to carry out its responsibilities under the Partnership Agreement.

Best wishes,

Matthew Maron

Authorized Representative for Phoenix Cayman Ltd., the General Partner

---



Bank Statements (2021-2022).zip
553K

Rachael Kierych <rachael@rkgroup.law>

Fw: Fwd: [EXTERNAL] Phoenix Holdco LP [APPLEBY-KY_LEGAL.FID1253811]

1 message

Raza Khan <hiraza@yahoo.com>
To: Rachael Kierych <rachael@rkgroup.law>

Thu, Jun 15, 2023 at 1:03 PM

Begin forwarded message:

On Thursday, June 15, 2023, 09:56, Karoline Molberg <karoline.molberg@gmail.com> wrote:

For info.

Begin forwarded message:

From: Benjamin Woolf <bwoolf@applebyglobal.com>
Subject: FW: [EXTERNAL] Re: Phoenix Holdco LP [APPLEBY-KY_LEGAL.FID1253811]
Date: June 14, 2023 at 4:24:57 PM EDT
To: 'Rachael Kierych' <rachael@rkgroup.law>
Cc: Candace Freeman <CFreeman@applebyglobal.com>

BENJAMIN WOOLF
PARTNER | CORPORATE
Appleby (Cayman) Ltd
Tel: +1 345 814 2006
Mobile: +1 345 525 4962

BERMUDA | **BVI** | **CAYMAN** | **GUERNSEY** | **HONG KONG** | **ISLE OF MAN** | **JERSEY** | **MAURITIUS** | **SEYCHELLES** | **SHANGHAI**
applebyglobal.com

From: Matthew Maron <mmaron@aramphoenix.com>
Sent: Wednesday, June 14, 2023 3:13 PM
To: Benjamin Woolf <bwoolf@applebyglobal.com>
Cc: Candace Freeman <CFreeman@applebyglobal.com>
Subject: Re: [EXTERNAL] Re: Phoenix Holdco LP [APPLEBY-KY_LEGAL.FID1253811]

This Message originated outside your organization.

Dear Mr. Woolf,

I write as a representative of the existing General Partner ("GP"), Phoenix Cayman Ltd., and in response to your email dated Sunday, June 11, 2023.

As I explained in my email dated June 6, 2023, the document titled "Consent of a Supermajority in Interest of the Limited Partners of the Partnership" (the "Consent") — which you emailed to me on June 5, 2023, and which purports to remove the existing GP for "Cause" (as defined in the LP Agreement) — is contrary to the terms of LP Agreement and, thus, null and void for a variety of independent reasons. I provided several of those independent reasons in my June 6 email, and I provide additional such reasons herein. The reasons in my June 6 email were focused on the absence of any breach of the LP Agreement by the GP, much less any breach sufficient to support a "Cause" removal, and the additional reasons herein are focused on the lack of an adequate "notice from the Partnership" of any such supposed breach (as required by the LP Agreement). The reasons provided in my June 6 email and herein are not exhaustive.

Before addressing the notice defect, however, I address the Consent's transparently improper purpose, which to the extent you continue to press its validity, will be apparent (from the relevant facts and circumstances) to any court asked to review it. A subset of the Limited Partners ("LPs") — the same subset who currently are pursuing baseless claims against the GP and its directors in a misguided and wasteful lawsuit in New York — plainly concocted the Consent as a gambit to try to seize control of the GP and strip it of its rights to 75% of the Partnership's incoming money at the precise moment when the Partnership is poised to receive a substantial return (up to $11 million) in connection with the U.S. Bank case. That return unquestionably will be due solely to the efforts of the GP. Under the terms of the LP Agreement, the GP will be entitled to receive 75% of the return, with the LPs being entitled to 25%. Against this backdrop, any court reviewing the consent will see it for what it is: an improper power grab — designed by a subset of the 25% minority — to try unlawfully to deprive the GP of its right to receive its (fair and contractually mandated) share of the anticipated return from the U.S. Bank case (for which it exclusively and indisputably is responsible).

That the Consent is being pursued to deprive the GP of its rights under the LP Agreement is supported by the fact that it ignores the rights the GP possesses in the event of a valid "Cause" removal (which has not occurred), including without limitation, its right under Section 6.1(d)(ii) to "have the option, exercisable prior to the effective date of the withdrawal or removal" (which according to the Consent already has occurred) "to require . . . the purchase of its General Partner Interest by the successor General Partner."

Setting aside the Consent's transparently improper purpose, as well as its dispositive defects as identified in my June 6 email, the Consent also is defective because the supposed notice on which it is based — the April 28, 2023 letter from Karoline Molberg to the GP (the "Molberg Letter") — does not qualify as a "notice" of a "breach" of the LP Agreement sufficient to support a "Cause" removal of the GP undersection 6.1(d) and Schedule 1 of the LP Agreement.

Section 6.1(d) provides that the GP may be removed only for "Cause," and Schedule 1, in turn, defines "Cause," in relevant part, as "a knowing, willful and material breach of this Agreement that is not cured within 30 days after the General Partner's receipt of a notice from the Partnership with respect to such breach." Nowhere does the Molberg Letter assert that a "breach" has occurred with respect to the LP Agreement, much less give the GP notice that Ms. Molberg was accusing the GP of a "breach." Indeed, the word "breach" does not appear anywhere in the Molberg Letter. Instead, the stated and apparent purpose of the Molberg Letter, which is titled "Demand for Audited Financials from Phoenix Cayman Ltd," was (as its title indicates) to make a "demand" — specifically, that the GP distribute to the LPs certain financials that Ms. Molberg identified therein — and it did so without asserting that any prior non-distribution of the financials constituted a "breach" of the LP Agreement, much less "a knowing, willful and material breach." Indeed, the Molberg Letter fails even to address the standard that governs whether a breach of the requirement to distribute financials has occurred — *i.e.*, the "commercially reasonable efforts" standard. For the reasons set forth in my email of June 6, the GP cannot possibly be deemed to have violated its obligation to "use commercially reasonable efforts" to distribute the financials at issue. Regardless, however, the Molberg Letter cannot provide the basis of a "Cause" removal of the GP, because it did not purport to be noticing a "breach" of the LP Agreement and, thus, did not trigger the 30-day cure period.

Moreover, even if the Molberg Letter had purported to assert a "breach," it still would not have triggered the 30-day cure period — or provided a sufficient basis for a "Cause" removal — because it cannot possibly be characterized as "a notice from the Partnership." The Molberg Letter, on its face, states that it was sent by a single individual, Ms. Molberg, in her capacity as the executor of the estate of a single LP, Erik Molberg. The Molberg Letter nowhere suggests that it was sent on behalf of any other LPs, much less the Partnership. A letter from the representative of a single LP that does not assert that the GP has committed a "breach" of the LP Agreement plainly does not qualify as "a notice from the Partnership with respect to such breach."

In any event, even if the Molberg Letter did not suffer from the dispositive notice defects identified above, it still would not have provided a sufficient basis for a "Cause" removal, because, as noted in my June 6 email, no "knowing, willful and material breach" of the LP Agreement has occurred with respect to the GP's obligation to distribute financials.

First, with respect to the annual audited financials, your June 11 email acknowledges that before the Molberg Letter was sent, the GP had obtained — and all LPs had received — audited financials for fiscal year 2020. As for the fiscal years 2021 and 2022, at all relevant times — *including before Moore Cayman's resignation in August 2022* — the GP engaged in the required "commercially reasonable efforts" to obtain and provide the LPs with audited financials for those two fiscal years. The GP is happy to provide the details of its ample efforts in that regard to the LPs, and it will do so in a separate communication to the LPs directly.

Your assertion that the GP somehow violated the LP Agreement based on its having sought an exemption from CIMA to file its audited financials for fiscal years 2021 and 2022 (while it seeks to find a replacement auditor for Moore Cayman) is incorrect and has no basis in the LP Agreement. Similarly, your vague assertion that the GP has engaged in "highly questionable transactions" (an assertion from which you noticeably distance yourself through the weak qualifier, "it is our understanding") is unsupported by anything in your email and is unsupportable. Moreover, neither of the foregoing assertions supports the conclusion that you purport to draw from them — that the GP has engaged in "actions and inactions" that are "outside the scope of 'commercial reasonableness'" — and it is reckless of you to suggest otherwise.

Second, regarding the unaudited quarterly financials for fiscal years 2020-2023, I already explained in my June 6 email (i) why it was (and is) not commercially reasonable for the GP to expend additional resources to prepare such unaudited financials (including because since 2020, no external money has come into the Partnership and the Partnership has

relied on cash infusions from members of the GP to continue to operate, including to continue to pursue recovery in the U.S. Bank case), and (ii) why any such unaudited financials would not have been material to a reasonable investor (including because such unaudited financials would not have reflected information materially different from that which appeared on the annual audited 2020 financials). You notably have not responded to these points or the substantive points I raised in my June 6 email regarding why, under the terms of the LP Agreement, no breach has occurred sufficient to support a “Cause” removal of the GP).

In any event, bank statements have now been provided to the LPs covering the entire period 2020-2022 and I am attaching here statements for Q1 2023. Moreover, the GP will shortly be supplementing those statements with balance sheets covering the same period, and on a going forward quarterly basis, the GP will provide the LPs with updated quarterly bank statements and balance sheets. Although the provision of such information is unnecessary under the circumstances (including for the reasons set forth in my June 6 email and herein), it certainly preempts any future complaint with respect to the unaudited quarterly financials. The LP Agreement does not, as your email incorrectly suggests, require that the quarterly financials be prepared by a third party or otherwise dictate the form such financials are to take.

To the extent that you continue to press the validity of the Consent, the GP reserves all rights and nothing herein or my prior correspondence shall restrict or otherwise limit the GP’s rights, claims or defenses.

Very truly yours,

Matthew Maron

Authorized Representative of Phoenix Cayman Ltd., the General Partner

On Sun, Jun 11, 2023 at 7:48 PM Benjamin Woolf <bwoolf@applebyglobal.com> wrote:

> Dear Mr. Maron,
>
> Please forgive the brief delay in responding to your email dated June 6, 2023, as I was traveling at the end of the week. As discussed in greater detail below, your client’s unilateral decision to deem the Written Resolution passed by a Supermajority of the Limited Partners of Phoenix Holdco as “null and void” is, respectfully, without merit as Phoenix Cayman's actions (and inactions) fall well outside the scope of “commercial reasonableness”.
>
> Initially, your contention that Phoenix Cayman provided the Limited Partners with the 2020 audited financial statements for the fiscal year 2020 is false. It is our understanding that those statements were circulated to the Limited Partners by Karoline Molberg (as Executor of the Estate of Erik Molberg), not Phoenix Cayman. Therefore, the Written Notice is correct on this issue.
>
> Second, the Limited Partnership Agreement (the “LPA”) is clear that “[w]ithin 60 days after the end of each Fiscal Year of the Partnership, a written annual report containing the financial statements of the Partnership for such Fiscal Year audited by KPMG LLP or such other accounting firm of similar national recognition” shall be distributed to the Partners. *See* Section 8.2. Per the LPA, Phoenix Holdco’s Fiscal Year for 2021 ended on December 31, 2021 rendering the annual report due on or before March 1, 2022. Thus, Phoenix Holdco’s then auditor, Moore Cayman, should have been instructed to prepare the financials well in advance of its resignation in August 2022. We also note,

that the annual reports prepared by Moore Cayman for Fiscal Years 2014-2019 were only distributed due to an order from the New York court, and Moore Cayman disclaimed its opinion for each and every year.

Third, Phoenix Cayman has provided no documentation to support its allegations that it has "diligently sought a replacement auditor", nor has it disclosed the reasons for Moore Cayman's resignation or why other firms have declined to accept the engagement. In fact, but for the Written Notice, the Limited Partners would not have known that Moore Cayman had resigned.

Fourth, neither your email nor your response to the Written Notice provides any explanation as to Phoenix Cayman's continued failure to provide quarterly reports for 2020, 2021, 2022 and the first quarter of 2023. As discussed above, Moore Cayman allegedly did not resign until August 2022 and should have been directed by Phoenix Cayman to prepare the quarterly reports for 2020, 2021 and Q1-Q2 2022.

However, rather than engage Moore Cayman (or another accounting firm) to prepare these required financials, it is our understanding that over the life of the Partnership the General Partner instead prioritized (and concealed), "discretionary bonuses" to itself and related parties, among other highly questionable transactions that are not contractually mandated operating expenses. Moreover, you have represented to the Limited Partners that Phoenix Cayman is seeking an exemption from CIMA for the filing of its audited financials, which directly conflicts with its contractual obligations under the LPA. Such actions and inactions, among many others, are certainly well outside the scope of "commercial reasonableness" and fall squarely into a "knowing, willful and material breach."

Our client seeks a smooth transition and very much desires to avoid court intervention. Please confirm by close of business Wednesday, 14 June, if Phoenix Cayman will reconsider its position that the Written Resolution is "null and void", respect the decision of the Supermajority, and whether or not Mr. Garg will sign the form required by the Cayman Registry.

Our client reserves all legal rights, and nothing herein shall amend, waive or release, or be deemed to have amended, waived, or released, any right, claim, action, or defense available to it including but not limited to seeking appropriate relief from the New York or Cayman courts.

Thank you.

Kind regards,
Benjamin

BENJAMIN WOOLF
PARTNER | CORPORATE
Appleby (Cayman) Ltd
Tel: +1 345 814 2006
Mobile: +1 345 525 4962

BERMUDA | BVI | CAYMAN | GUERNSEY | HONG KONG | ISLE OF MAN | JERSEY | MAURITIUS | SEYCHELLES | SHANGHAI
applebyglobal.com

From: Matthew Maron <mmaron@aramphoenix.com>
Sent: Tuesday, June 6, 2023 9:35 PM
To: Candace Freeman <CFreeman@applebyglobal.com>
Cc: Benjamin Woolf <bwoolf@applebyglobal.com>
Subject: [EXTERNAL] Re: Phoenix Holdco LP [APPLEBY-KY_LEGAL.FID1253811]

This Message originated outside your organization.

Dear Mr. Woolf and Ms. Freeman,

I write as a representative of the existing General Partner ("GP"), Phoenix Cayman Ltd., in response to the document you circulated titled "Consent of a Supermajority in Interest of the Limited Partners of the Partnership" (the "Consent"), which purports to remove the existing GP for "Cause" (as defined in the Partnership Agreement), supposedly (i) in accordance with Section 6.1(d) of the Partnership Agreement and (ii) based on a "written notice" dated April 28, 2023 (the "Written Notice"). For a variety of reasons, including but not limited to those set forth herein, the Consent is contrary to the terms of the Partnership Agreement and, thus, null and void. Accordingly, the existing GP remains the GP and will continue to execute faithfully its obligations under the Partnership Agreement, as it has done since the Partnership's inception.

The Consent purports to remove the GP for supposed breaches of its obligation to provide the Limited Partners ("LPs") with annual and quarterly financial statements for fiscal years 2021 and 2022. The Consent, however, like the Written Notice that preceded it (to which the GP promptly responded on May 10, 2023), ignores both the relevant terms of the Partnership Agreement and the relevant context. With respect to the Partnership Agreement's relevant terms, the GP is obligated to "use commercially reasonable efforts" to provide the relevant financial statements, and the GP can be removed for Cause only if it has engaged in a "knowing, willful and material breach" of the Partnership Agreement. The Consent fails to address either of these standards, which is reflective of its overall fatal defects.

Here, the GP cannot be deemed to have violated its obligation to "use commercially reasonable efforts" to provide financial statements, much less to have engaged in a "knowing, willful and material breach" of the Partnership Agreement. As an initial matter, as the GP explained in its response to the Written Notice, the LPs received audited financial statements for fiscal year 2020 — notwithstanding the false statement in the Written Notice that they had not. In addition, no request for audited financial statements by the LPs was denied by the GP — notwithstanding the false statements to the contrary in both the Written Notice and the Consent. Rather, as the GP's response to the Written Notice explained, the only reason why the LPs have not yet received audited financial statements for fiscal years 2021 and 2022 is because in late August 2022, the Partnership's long-time auditor, Moore Stephens Cayman Ltd ("Moore Cayman"), resigned (after it was acquired by another firm), and since then, the GP has been unable to retain a replacement auditor — despite a concerted effort on its part to do so. Indeed, since August 2022, the GP has diligently sought a replacement auditor. It has contacted multiple potential auditors, both in the Cayman Islands and the United States, and has had detailed discussions with each of them. Unfortunately, following those discussions, the firms declined to accept the engagement, but the diligent and documented efforts on the part of the GP establish both that it "use[d] commercially reasonable efforts" to provide the LPs with the relevant financial statements, and that it has not acted "willfully" in being unable to do so.

As the GP also explained in its response to the Written Notice, while the GP seeks to retain a replacement auditor, it has acted responsibly by submitting a formal request to its Cayman Island regulator, CIMA, for an exemption to the

requirement that it obtain audited financials. The request remains pending with CIMA, and thus, contrary to the suggestion in the Consent, no action needs to be taken to address the Partnership's standing with CIMA.

Moreover, as has been made clear to the LPs through a variety of sources — including, but not limited to, the annual financial statements that they received for fiscal year 2020 and earlier years, as well as public filings in various ongoing litigations related to the Partnership — since the 2020 audited financial statements were prepared and distributed to the LPs, the Partnership has not received any money from any external source. Rather, the only money that the Partnership (or either of its subsidiaries) has received since 2020 is money that was contributed by one or more members of *the existing GP*. That money was contributed to enable the Partnership to pay certain expenses and, thereby, to continue to operate for the benefit of the Partnership as a whole — including the LPs. In other words, rather than seek money from the LPs, one or more members of *the existing GP* contributed the necessary money themselves. In any event, based on the lack of any external money coming into the Partnership during fiscal years 2021 and 2022, any financial statements prepared for those fiscal years would not have been materially different from the audited financial statements that the LPs received for fiscal year 2020 — and, therefore, would not have been material to a reasonable investor. Thus, any non-distribution of financial statements for fiscal years 2021 and 2022 (whether annual or quarterly) cannot be deemed a "knowing, willful and material breach," particularly when the GP was working diligently to retain an external auditor to prepare audited financial statements for those fiscal years.

Further, rather than expending the time and resources — which the Partnership did not have — to prepare what would have been immaterial unaudited financial statements, the GP instead appropriately opted to allocate its scarce resources to working with outside counsel on behalf of one of the Partnership's subsidiaries, Phoenix Real Estate Solutions ("PRES"), to pursue approximately $11 million in escrowed funds in the *U.S. Bank v. Triaxx Asset Management* case. As the GP previously has explained to the LPs, of the pools of money that theoretically remain available to the Partnership or its subsidiaries, the $11 million at issue in the *U.S. Bank* case is the most likely to be collected. Accordingly, for this additional reason, the GP's decision to focus and allocate its scarce resources to pursue the $11 million in escrowed funds (rather than on preparing immaterial financial statements) cannot possibly constitute a "knowing, willful and material breach."

Additionally, given that the Partnership (together with its subsidiaries) did not receive any money from any sources other than the members of the existing GP during fiscal years 2021 and 2022, it was not "commercially reasonable" for the GP to spend time and money preparing immaterial unaudited financial statements. Indeed, the implication of the Consent is that members of the GP not only should have contributed the money they did during fiscal years 2021 and 2022 to keep the Partnership operational, but that they also should have taken the "commercially [un]reasonable" step of contributing still more money to prepare immaterial unaudited financial statements.

Finally, in addition to being ineffectual for the reasons set forth above (among others), the purported effort to remove the existing GP is wrongheaded; the Consent itself reflects that it was spearheaded by counsel for the handful of LPs who currently are pursuing a variety of meritless claims against the existing GP and who plainly are seeking to further their own agenda rather than acting in the best interests of the Partnership. Indeed, given the extensive work that the existing GP has done in connection with the *U.S. Bank*case, the institutional knowledge that it has with respect to the underlying matters at issue in that case, and the current posture of the case, seeking to replace the existing GP now would not be in the best interests of the Partnership. The best course of action to maximize the likelihood of obtaining additional funds for the benefit of the Partnership is to allow the GP to continue its work in seeking to recover the $11 million at issue in the *U.S. Bank* case, which, as noted, represents the best opportunity for additional, potentially significant distributions to the LPs in the near term.

For the foregoing reasons, among others, the Consent fails to identify any plausible basis to remove the GP for Cause, and the Consent therefore is null and void. The GP therefore will continue to carry out its responsibilities under the Partnership Agreement.

Best wishes,

Matthew Maron

Authorized Representative for Phoenix Cayman Ltd., the General Partner

On Mon, Jun 5, 2023 at 5:28 PM Candace Freeman <CFreeman@applebyglobal.com> wrote:

Dear Mr. Maron,

We represent Blue Bear Ltd. (**Blue Bear** or the **New General Partner**). Earlier today, a supermajority of the limited partners of Phoenix Holdco LP (**Phoenix Holdco**) voted to remove Phoenix Cayman Ltd. (**Phoenix Cayman** or the **Former General Partner**) as Phoenix Holdco's general partner. A copy of the written consent reflecting the removal of Phoenix Cayman is attached to this email and shall also be personally served on Phoenix Cayman. Blue Bear has been appointed as the New General Partner.

It is our understanding that you serve as counsel to Phoenix Cayman. To ensure a proper transition of affairs, we request that the Former General Partner comply with the following:

- Execution of the attached section 10 statement to be filed with the Cayman Registry reflecting the transition of the General Partner;
- Confirm that all necessary documents will be executed with CIBC within the next seven (7) days to ensure a timely transition of Phoenix Holdco's, Phoenix Real Estate Solutions Ltd.'s ("PRES") and Phoenix Structured Credit Investment Limited's ("PSCIL") bank accounts to the directors of Blue Bear;
- Confirm that no funds have been transferred today, and no funds will be transferred going forward from Phoenix Holdco's, PRES', or PSCIL's bank accounts, unless such transfer is authorized by the New General Partner;
- Within seven (7) days, provide all books and records for Phoenix Holdco, PRES and PSCIL, whether stored electronically or hard copy, to Blue Bear.

Please kindly confirm receipt of this email.

On behalf of
Benjamin Woolf

BENJAMIN WOOLF
PARTNER | CORPORATE
Appleby (Cayman) Ltd
Tel: +1 345 814 2006
Mobile: +1 345 525 4962

CANDACE FREEMAN
ASSOCIATE | CORPORATE
Appleby (Cayman) Ltd.
Tel: 3458142740
Mobile: +1 345 516 2740

BERMUDA | **BVI** | **CAYMAN** | **GUERNSEY** | **HONG KONG** | **ISLE OF MAN** | **JERSEY** | **MAURITIUS** | **SEYCHELLES** | **SHANGHAI**
applebyglobal.com

The information in this e-mail is confidential and may be legally privileged. It is intended solely for the addressee. Access by any other person to this e-mail is not authorised. If you are not the intended recipient, please delete this e-mail. Any disclosure of this e-mail or of the parties to it, any copying, distribution or any action taken or omitted to be taken in reliance on it is prohibited, and may be unlawful.

The term "Partner" is a title referring to a shareholder, director, employee or consultant of equivalent standing and qualifications of Appleby (Cayman) Ltd. which is an Appleby legal practice in the Cayman Islands and a company with limited liability. A list of the partners of any Appleby partnership, or of the members, shareholders and directors of any Appleby limited company and of any other non-shareholders or members or directors who are termed “Partners” of any legal practice is available for inspection upon request from your relationship partner. Appleby is an organisation of separate entities and legal practices comprising both corporate and partnership form, each established to provide legal, fiduciary and administration services under the Appleby name from the jurisdictions in which it is based.

The information in this e-mail is confidential and may be legally privileged. It is intended solely for the addressee. Access by any other person to this e-mail is not authorised. If you are not the intended recipient, please delete this e-mail. Any disclosure of this e-mail or of the parties to it, any copying, distribution or any action taken or omitted to be taken in reliance on it is prohibited, and may be unlawful.

The term "Partner" is a title referring to a shareholder, director, employee or consultant of equivalent standing and qualifications of Appleby (Cayman) Ltd. which is an Appleby legal practice in the Cayman Islands and a company with limited liability. A list of the partners of any Appleby partnership, or of the members, shareholders and directors of any Appleby limited company and of any other non-shareholders or members or directors who are termed “Partners” of any legal practice is available for inspection upon request from your relationship partner. Appleby is an organisation of separate entities and legal practices comprising both corporate and partnership form, each established to provide legal, fiduciary and administration services under the Appleby name from the jurisdictions in which it is based.

The information in this e-mail is confidential and may be legally privileged. It is intended solely for the addressee. Access by any other person to this e-mail is not authorised. If you are not the intended recipient, please delete this e-mail. Any disclosure of this e-mail or of the parties to it, any copying, distribution or any action taken or omitted to be taken in reliance on it is prohibited, and may be unlawful.

The term "Partner" is a title referring to a shareholder, director, employee or consultant of equivalent standing and qualifications of Appleby (Cayman) Ltd. which is an Appleby legal practice in the Cayman Islands and a company with limited liability. A list of the partners of any Appleby partnership, or of the members, shareholders and directors of any Appleby limited company and of any other non-shareholders or members or directors who are termed “Partners” of any legal practice is available for inspection upon request from your relationship partner. Appleby is an organisation of separate entities and legal practices comprising both corporate and partnership form, each established to provide legal, fiduciary and administration services under the Appleby name from the jurisdictions in which it is based.

Q1 2023 Bank Statements.zip
70K