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Special audit

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CHECK-Audit Questions about TSO-Performance

Dear Ladies and Gentlemen

Why a TSO-Audit

The industry of closed public participation Fund world will only survive if the compliance rules of the Capital Investment Code KAGB are strictly implemented.

As chief analyst of closed end Fund investments, CHECK initiator Stephan Appel has been active in the industry since 1995 as an author of CHECK analyzes and as an analyst since 1991!

In mid-November 2017, CHECK set itself the task of carrying out a performance audit of the funds issued by US issuer Boyd Simpson in accordance with the German "Vermögensanlagegesetz".

The background is questions from investors who complain about a deteriorated quality of TSO reporting transparency. The core issue is the question of the origin and plausibility of the payouts of the TSO / DNL funds declared as distributions.

These questions are all the more emphatic as, on the TSO side, access to original documentation of the "Financial Statements" showing operating cash flows has not been granted. For about a year according to CHECK information on this issue no progress could be achieved.

For example, subject is the earned net cash flows from leases and sales after costs, financing, fees, taxes and fees for the TSO-DNL LP Active Property I investment fund. Currently, the TSO-DNL LP Active is located Property II in the placement.

Starting point

For the shareholders meetings "Gesellschafterversammlung" are given to the investors sheets with 10-15 pages fund reports called "shareholders' meeting" to the attention of the investors for example, under the Fund title "TSO EUROPE FUNDS INC.", An Incorporation in Atlanta, 1401 Peachtree Street, Suite 400, Georgia 30309. This Inc. is registered under Company Id 1162839 as a Domestic Profit Corporation, Georgia. The last registration took place in 2016; TSO Europe Funds, Inc. is 2016. "(GeorgiaDB.com), but we were unable to find any of the company's financial statements for this or any other year.

Fund reports with questionable appendix

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Funds reports titled "Shareholders' Meeting" include regularly a copy of a two-page "Independent Auditors Report" with the address "To the Partners" appended at the end of the charts with Fund Object and Payout Notices to investors under the heading "Audit Report". These sheets refer to the different respective fund names, for ex. "TSO-DNL Fund IV LP", followed by the heading:

„Report on the Consolidated Financial Statements“

However, the content of these reports, which are referred to in the confirmation texts, refers to reports / texts / reports that do not match the above contents of the worksheets. This can be seen, for example, because the audit reports refer to "Notes" that do not appear in the above content.

Distancing of the auditor

The Auditing Certified Public Accountant Marshall Jones, Atlanta, attaches importance in the Final Report to the determination that the Issuer's "supplementary information" does not be a part of the audited "Financial Statement" (cited from the TSO-DNL Fund IV Report, Shareholders' Meeting 2015). Such information is the responsibility of the management". What, exactly, is with it meant?

Question to the US accountant

CHECK has asked accountant Marshall Jones but CHECK was not answered! How reliable are the numbers listed? From the attestation the listed numbers were de facto excluded! Because it is not recognizable, which were examined and whether they belong at all or partly to the attestation and which do not?

Not only the letter format of the "attestation" does not match the above report format. Above all, it is not certain whether and which content belongs to the testate.

Scope evaluates without certified numbers

The Scope rating agency based its recent TSO management rating on key issues on TSO manager statements: "Scope points out that Asset Management Rating is not an audit or auditing. The numbers of parent company "The Simpson Organization", Inc., which were made available to Scope, are unaudited. "(Ra-ting, 16/10/2017, p.1).

Self-presentation without external examination

The TSO brochure for TSO-DNL Fund IV, L.P. "Brief information" with a performance summary of TSO funds I to IV is unaudited. Also recent reports such as the TSO-DNL Active Property, LP. "Portfolio overview" were not subjected to any external review. However, only an external audit fulfills the condition that the figures given in annual accounts / transactional documents have been correctly taken over and properly summarized.

Conflict of interest

This increases the risk that the reported figures in the at least 3-level TSO corporate structure, each with split co-investor and Boyd Simpson mixed proportions, would not be exclusively for TSO fund investor interests due to lack of advisory board, funds usage auditor, KVG or custodian could have been processed.

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Insight into the operating cash flows

Only an insight into the operating cash flows, the fair values of the real estate and an overview of the liquidity of each fund can refute this suspicion. Only a direct, economically viable insight into all TSO fund-relevant real estate transactions creates the required transparency. Because only the cash flows from the rental and sales revenues prove that the actual real estate values yield this income. Only then, it is possible, divided into share rights, that the TSO net income after costs, fees, profit-sharing rights and taxes can be credited to the fund investors. Only then it becomes clear whether the 8% p. a. plus special payments were actually earned and beyond the repayments of equity, return of the investment will be generated.

Independent MAI opinions are not presented

Only the audited real estate values of the new buildings or revitalized existing older properties, which are measurably derived from independent real estate appraisals, can underlie the fact that the payments to the investors do not just refund the paid in equity capital, but can be generated from a growing net asset value of ALL FUND OBJECTS. For this purpose, the gross value of the acquisition costs must be exceeded several times over by the accumulated net values in order to be able to achieve distributions, repayments and returns on the invested capital at the investment level. However, the MAI real estate appraisals independently prepared for the purchase objects - although stated to be regularly prepared for the purchase audit - are not submitted.

Were the sales results of Fund I actually earned?

In the meantime the question came up, whether the results of the exit for Fund I with a result of approx. 193% incl. Repayment for the TSO Fund I investors are based on realistic market factors, since the Issuer already participated in the property prior to the fund purchase own interests was involved. A proof of expiry of this real estate transaction has not been submitted. It is therefore possible that an object sale for TSO-DNL Fund 1 was planned, but contrary to reported information the deal has not been realized. Also for TSO-DNL Fund 2 it is reported that sales should not have been made in the announced form.

Net result for funds I?

The results used in the performance reports are misleading: It is surprising, for example, that the "Exit expectations according to the prospectus" for the TSO Fund I are described as USD 5,061,047 (see the WP Brandt audit to the 2011 Leistungsbilanz). By contrast, revenues for the TSO 1 are listed in the Supplement to the TSO IV "Results Report 31.12.2010" in the addendum to the TSO-DNL Fund IV at USD 1.612m. How much was actually really realized and paid out when for whom?

Object history - sold under purchase price?

In June 2005, Boyd Simpson, in the State of Georgia, County of Futton, entered into an easement for Orange County Florida under "TSO VISTA CENTER, LLC, a foreign limited liability company" ("Transit Easement Agreement"), attested by notarial deed June 14, 2005. According to the 2008/2009 shareholders' report, the Vista Center Shoppes was purchased at 94,698 square feet in October 2006 for USD 23.08 million

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(TSO wording: "Property Acquisition Costs"). After an annual distribution from 2007 of 8% p. a. plus early sign-up bonus of 4% (cumulative 64%), in 2015, according to the shareholders' report, a "sales dividend" of 123.28% was added. A sale was made according to press reports on 09.11.2015 to the real estate group "Austion.com" for USD 21.225 million (external source Ten-X / Media). However, our sources do not refer to the seller Simpson, or TSO VISTA CENTER, LLC, but to a broker, a "seller and listing broker HFF". This is not proof of a TSO sale! And: the question is how the property could add value if the selling price (if it was a TSO deal at all) was below the purchase price, despite the fact that the property had regular rental income.

Strongly fluctuating rental income

The annual TSO logs show sharply fluctuating rental income, which tends to decrease for the VISTA CENTER from 2007 onwards (from USD 2,047,285 in 2007 to USD 1,747,910 in 2013 and USD 1,896,255 in 2014). Should the value-enhancing measures not have taken effect? These rental income are also not occupied. The annual net operating surplus included in the TSO listings (after all, there were still such disclosures) was likely to fluctuate sharply: in 2013, it fell to USD 201,448 (USD 496,302 was still reported in 2012). However, according to the share, only 20% of this fund, approx. USD 37 - 100 thousand, was held by the fund. Also wonders how the fund could then annually pay out about USD 185,200 (= 8%), if he had a maximum of 20% of the rental income?

Questionable numbers

Another mystery is why interest rates in 2012, the worst run-time year according to rental income (rental income of approximately only \$ 1.66 million), were \$ 639,321 cheaper by approximately \$ 100,000. The following year, they rose suddenly to USD 982,506 USD 200.000 above average. Has fresh money been raised again at this time? For example, to ensure payouts?

Rental trends instead of rental income

Instead of regularly listing the rental results of the fund objects in order to explain the coverage of costs and distributions, the newer TSO performance reports abstain from this information and speak, instead, for example of "rental trends" in percent? Why are no rental income figures actually achieved listed (and proven by third party?!). Instead you list, for example, the "number of tenants" or the "occupancy rate in percentage" (Active Property I 2015)? How can be explained the "undiscounted" future expectation for the following year amounting USD 8.163 million (forecast 2015)?

What has the TSO Fund Accountant really checked?

A key question is whether, after forwarding the transfer payments of the US Escrow Agent "Specialized Title Services, Inc." c / o George C. Calloway, Peachtree Street, Suite 400, Atlanta Georgia 303309, to the TSO USD account from where payments were made, long before or instead, that there has been sufficient income from the appreciation of real estate assets. "Distributions" are, as long as this is not the case, repayments (= withdrawals) of equity capital without ever having added value! Without insight into the TSO USD liquidity account, it is not possible to clarify this risk. An insight into this account was regularly denied according to our information.

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Examination to which standards?

(IDW principles from German Chamber of Accountants)

At the time, the auditor Brandt conducted the audit of the TSO "2011 performance sheet (Leistungsbilanz), why did he apply the IDW principles of 2002, but not according to the long-established standard IDW S4. Why not? In his testimony dated 27.06.2012, under the audit documents he has reviewed also listed TSO "Annual Financial Statements". In contrast, in the VIB (obligatory information sheet to investors) for TSO-DNL Active Property II, LP p. 2, it is expressly stated that "the Issuer has not yet prepared its annual financial statements". So it is not possible to examine the "debt ratio" of the fund investments, that can not be specified ... a warning information is noticed (VIB). The CHECK request to the accountant Brandt, which annual accounts were examined was rejected.

Answer rejected

Accountant Brandt was also asked by CHECK: Have you ever had any insight into the USD account or USD accounts of the General Partner (comparable to the "Komplementär") to which the deposits of the German fund investors are made without further examination, if the deposit capital exceeds the USD 3 million threshold?

Please also see the CHECK questionnaire to Boyd Simpson in German!

Best regards
Stephan Appel