

# UNTERNEHMENSANALYSE

Stephan Appel

**To:** TSO Europa Funds, Inc.  
1401 Peachtree Street – Suite 400  
Atlanta, Georgia, 30309, USA  
CEO Allan Boyd Simpson

**Date:** 25.11.2017

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Pages: 7

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## **CHECK-analysis TSO-DNL Active Property I and II, LP/TSO-performance-audit**

Dear Mr. Simpson

I've reviewed some documents and material and now here are following some additional questions that may easier be answered because of being put on a better informed basis:

1. Financial Statements: "The annual audit of the financial statement shall be done by a firm of independent certified public accountants chosen by the general partner" (P. 133, Active Property 1 = ACP 1). Please give us the chance to audit these statements, especially including the operating LP's/property companies' audit.
2. Are German Investors familiar with the fact, that they DO NOT directly participate at a real estate Property but they are a kind of shareholders (LP 1) of a company keeping shares of another company (LP 2)?
3. Are German investors aware of the fact that besides your reporting there is no external control and no insight into any movement of their money when it has been transferred onto your operating fund account by the escrow agent?
4. And do they know that this capital is mixed up with other financing sources as loans, direct investors and other participants?
5. How can Investors especially differ and realize, if money for distributions derives from placed, newly funded money or from net earned operating income or bank loans?
6. Can this USD \$ account serve for investments, costs, fees, distributions any other use which the operating manager thinks he has the right to?

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7. Compliance of the TSO Reporting: amendment 1 of TSO-DNL Fund IV, L.P. p.3, Atlanta 2012, referring to the cumulated results of TSO-DNL Fund I: in line 6 you summarize **proceeds of USD 1.612.283**. Date: Results from 31.12.2010! But in the Reporting referring to the same Fund
8. But in the reporting amendment of the prospectus Active Property 1, the same column shows a very different figure, although also this second report titles the same audit time, the 10'th December 2010!, the same Fund, the same investments. How can a former Fund in a later retrospect assume other figures? In the second case the Fund IV amendment reports in the same **line USD 12.600.000 as proceeds?**
9. A similar "change" took place in the table below: Fund 2 reached in the first report proceeds of **USD 3,124m**, in the second **USD 9.164.442???** What is correct?
10. Is it correct, that the sales of Fund 1 and 2 have been planned, but they haven't been realized! We have been said so! So you could not yield 8 % as the last of the column assigned, but less, maybe around 3 %?! So where did the proceeded payments come from?
11. Former investor reports showed besides the liquidity results the net income yields of the real estate business of each real estate property. So investors and readers could comprehend where the proceeded distributions came from. In the today's reports you refrained from discussing these figures: why?
12. If amendment 2 for ASP 2 informs German investors participating with 17 % at the equity share of the Sterling Pointe investment, how can they prove, if their share of costs also refers to 17 %?
13. Yet investors did not receive a financial statement delivering a complete overview of costs and investments. How can they prove which money derives from income, net profit and fresh funded money?
14. Could you please explain the liquidity stream on each level of the fund structure under the surface of ACP 1 LP roof?
15. How could they have the chance to assess, where in this particular case the other 85 % investments came from and if the referring share of costs had been properly taken in account?
16. Why does Bloomberg not find any "P Key Executives for Arbors Office Portfolio, LLLP" its comment says: "Arbors Office Portfolio, LLLP does not have any Key Executives recorded." Is that inaccurate information?  
<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=253010757>
17. And what kind of registration form is understood under "Branch Relationship" (if that is the case)? [ARBORS OFFICE PORTFOLIO, LLLP](#) has a

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branch called [Arbors Office Portfolio, LLLP](#). About Branch Relationships we learn: A branch company is an out-of-jurisdiction registration of a company (in the US it is often referred to as a 'Foreign Corporation').

What does the statement mean: “out of registration”?

[https://opencorporates.com/companies/us\\_de/5387923](https://opencorporates.com/companies/us_de/5387923)

18. What is instead a certificate “of Good Standing”? Amendment AC1 P. 11

Please add your comment on the procedure of “Registration”: What kind of registration do your operating companies have? I learned:

“If you don’t maintain registered agent, your company is at risk in four ways.

19. **You may not receive critical information that you need.** For example, if your company is sued and there is no registered agent to receive the summons, the plaintiff can proceed with the lawsuit—without you. A default judgment can be entered against your company even if the lawsuit was frivolous and you could easily have won the case. By the time the judgment is enforced against your assets, it may be too late to undo the damage.

20. **Your company risks its good standing with the state.** Losing good standing can have a serious impact on your business. It can prevent you from bringing a lawsuit in the state, expanding into other states, or obtaining financing that you need to expand your business.

21. **Your business (and you personally) may be hit with fines and penalties for non compliance.** This can be a Catch-22 because without a registered agent, you may be unaware of the situation which can cause the amounts and sanctions to continue to increase.

22. **The state can administratively dissolve your entity.** If this happens, you forfeit the limited liability protection that your entity provided which leaves you exposed to business creditors. In most cases, administrative dissolution can be remedied—but not in every case and not after too much time has elapsed.

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Legal Entity Identifier:	54930000BW5FYNJDRK73	Legal Name:	Arbors Office Portfolio, LLLP
Legal Address:	C/O The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington 19801	Headquarters Address:	1401 Peachtree Street Suite 400 Atlanta 30309
Legal Country/Region Code:	US / US-DE	HQ Country/Region Code:	US / US-GA
Country:	US	Country:	US
Region:	US-DE	Region:	US-GA
Legal Form:	LIMITED LIABILITY LIMITED PARTNERSHIP	Business Registry Code:	
Normalised Legal Form:		Registry's Identifier:	
Successor Entity:		Jurisdiction Country/Region:	US

23. Are these TSO related Companies realizing operative real estate business for TSO registered companies in the above defined sense?
24. Is it correct, that: All corporations, LLCs and limited partnerships doing business in Georgia must have a registered agent with a Georgia State address. The registered agent may have a mailing address that includes a post office box as long as a physical location is also listed.”  
<https://www.residentagent.net/georgia-registered-agent>
25. P. 6 (AP 1): Valuation Report for the “Perimeter Sterling Properties” (USD 55.300.000) by McColgan & Co. May we please have a look at this MAI report?
26. P. 6 (AP 1): What was the price for the hedging against loan interest increase above 3,8 %?
27. Development of 728 Market Street: I'd like to assess a “Financial Report” showing if EMJ Corporation can realize the project in line with the budget!
28. Are there any construction kinds or public binding obligations connected with the acquisition of Market Street?
29. The TSO “Financial Report” of this object could demonstrate us too, if the projected costs are in line with actual construction processing?
30. Investors got informed that the mortgage was personally secured by Boyd Simpson: Could we please have a look at the mortgage agreement?
31. TSO Chattanooga Development: For the investment loan of about USD 20m you are supposed to pay 4, 5 %: That means about USD 810.000 year, USD 67.500 a month. Since there are yet no payments from tenants before realization the interest obligations have to get covered by other free liquidity. Where does this liquidity come from?

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32. Can you please send us an actual video of the ongoing building construction progress!
33. ACP 1, amendment 2, P. 14, Chattanooga: Please explain us the calculation of the projected exit prognosis amounting USD 47,2m. How did you calculate that yield/purchase price?
34. Did you succeed to find a follow tenant when Mercedes Benz USA will change in 2018 quitting the temporary corporate headquarters at Sterling Pointe (SP)?
35. What pays Benz USA as rent?
36. Does the partnership with the Sterling Pointe developer Rubinstein Group (RB) last on? Does this Group have owner rights in the SP project? Under which conditions does RB possibly still participate?
37. What is the actual SP occupancy rate by tenants, by projected full occupancy and by value in USD?
38. ACP 1, amendment 2, SP p 8: Your prognosis calculates an exit sale of USD 94,4m. Your investment including purchase price, development and transfer costs was reported to an amount of USD 61,2m (amendment 2 ACP 1 P.8). Please help us to recapitulate that calculation: If you buy the LP Shares for the German Investors with a Cap rate of 8 %, you need to gain a yearly gross income of about 12 % to be able to pay 8 % to the investors after costs: that would mean you need a yearly amount of USD 9m (12 %) covering at least USD 4,9m (8%) distribution. But the occupation rate in 2016 amounts 78, 5 % average because of vacancy. That means less income reaching about USD 6,04m. In other words you need more income, to cover distribution payments on the committed level. Do we have the chance to look through the SP cash flow structure by being able to assess the book keeping?
39. SP lease prognosis: Can you contract 27/sqft for office space (market research for modern premises)?
40. SP: cashing 27/sqft you might earn gross sales of around USD 9m a year and after costs, maintenance, fees, interest, amortization, tax you might gain USD 3m. How do you really close actual lease contracts?
41. DNL has funded around USD 225m for ACP 1: You would have to invest in far more projects than the till now listed projects. Which pipeline projects are still ready to get realized?
42. ACP 1, funded USD 225m: if you deduct summarized soft costs of ca. 20 %. There remain around USD 180m for LP partnership shares. Till now you reported about 12 Investments for ACP 1. Is it possible to get an overview of all the invested shares till October 2017?

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43. **We were recently informed of 7 additional investments since 2016 of cumulated USD 87,1m to be added to the list of amendment 2 of cumulated USD 50m, which results in an investment quote for AC 1 at around USD 137,1m per the end of October 2017. Roughly counted there should be a liquidity rest on your German investor USD master account of about USD 43m? Could you please correct this figure and adjust it for our understanding?**
44. To get the money invested at 8 % cap rate you are motivated to invest the money as soon as possible to benefit from favorable investment opportunities comply with payment commitments from the date on you receive the money from German investors? In 5 Years you have to distribute a sum of around USD 90m? Plus returning the investment of USD 225! Plus interest payments this obligation rises to an amount of more than USD 350m.
45. Related on an investment quote of actually USD 137,1m working capital that would mean you have to pay in the first distribution year around 13 % on that bound capital delivering USD 18m promised distribution! Do the acquired real estate projects yielding that amount? Ho do you manage these liquidity obligations?
46. If we take in consideration that “Market Street” will deliver the first income in a few years we have to deduct USD 14,6m from USD 137,1m and on that basis we have to gain a yield of 14, 7 % on USD 122,5m average capital employed.
47. How many projects have you definitely realized with continuously a net cash flow of 8 %?
48. And what is the actual remaining capital still available on the ACP 1-Funds-account? Therefore we should inspect the referring TSO investment account (let’s call it “USD master account”).
49. If your USD master account contains mixed positions of several sources (investment, costs, income, distributions, fees, tax payments), we should have an inside view how your Cash management is organized?  
<https://www.bizjournals.com/atlanta/print-edition/2016/06/03/office-space-scarce-expensive-in-central-perimeter.html>
50. ACP 2: p. 147 Our understanding of fund cash control is (we call it in German “Mittelverwendungskontrolle”) is that an independent escrow agent, authorized by the yearly ongoing supervisory authority of the state BaFin, has to check if:
- \* The paid in money is completed on behalf of the funding target,
  - \* That the cash calls correspond to the investment criteria (which have to be confirmed by the BaFin before the Fund is allowed to be distributed),
  - \* that the property which is supposed to be acquired has an adequate value in line with the approved investment criteria,

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\* That investors can realize their right, to prove the books at any time, being able to get contact among each other at any time to organize shareholder meetings.

51. So German regulations have a rather different understanding of “escrow agreement” which strongly differs from a more or less unregulated “Escrow agreement” of ACP 1 and 2.
52. Contrary to the view taken “Mittelverwendungskontrolle” as a throughout and permanent control of the fund cash flows by an external independent entity und a “four eyes principle” how we call it, the escrow agreement in the understanding of the prospectus ACP 1 and 2 reduces this function to minimum of giving the money free by just getting announced a "Threshold event": the escrow agent receives a statement / or money order and “the agent shall turn over the balance” which means, that he has to transfer the money without any further assessment.
53. p. 148 ACP 2: This notice is definitely placed in contradiction to our understanding: "Third parties can not rely on this agreement or be considered as third-party beneficiaries of this agreement?" Investors may not rely on the "control functions" of this contract? In contrast to that understanding the German “Verwahrstelle” is even reliable for a proper control of the investor means, continuously controlled by the state authority department of finance division BaFin!
54. This is a main point to be discussed. I'd propose to create a “substitute” Institution, covering a certain approach to our KAGB-understanding. It would bring a significant risk reduction, even if your company compliance since ever worked as if such a substantial cash control and documentation is self understood. But this procedure seems yet not transparent enough. Do you have an idea to cover this point?
55. Your detailed monthly financial Reporting seems a good instrument to cover this requirement. Let's learn how your internal revision has established a controlling system to avoid any misuse of the foreign capital of the German retail investors by a hopefully permanent/or timely controlled liquidity processing.
56. So that we can demonstrate that during any time of the investment and disinvestment process any other use than the prospectus has predisposed is in practice not possible. **How can a misuse be excluded?**
57. Further problem: the escrow agent has to act on unchecked instructions. He does not check the authenticity of the documents, fax, and files. He seems not to be more than an account manager. He has no authority to examine the given instructions and their substantive correctness. I think this system can be improved on the behalf of the investors, even if it is “only” a sub regulated “Vermögensanlage”!
58. In our understanding the escrow agent has to duly perform an equivalent value check by an independent appraiser if he is not sure of the adequate value of the property to be acquired. This would require a corresponding independent MAI report from a reviewer authorized by a similar institution as the “BaFin”. Do you see a chance, to qualify the existing system towards these rules?

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59. The question also arises whether the KAGB-prescribed foreign capital quotas can be met. These quotas cover both levels: the property management company level and the Fund level. So that the total debt level can not exceed a certain amount (max 60 %). Other German Funds therefore separate out those targets and sort those funds out leveraging higher than the total allowed quote.
60. Could you run the TSO-business model with a total debt ratio of max. 60%?
61. First look: it should also be stated which projects go into the own business and which into the fund business. Does there exist a rule of that kind, privileging investors principally to have a first right of acquisition before you can buy on your own account? A rule making sure investors have a fair chance of getting the best deal?
62. Could we prove evidence showing that TSO is investing in the targets only parallel by investing parallel with own money participating at the investors risk?
63. We would like to evaluate the ongoing projects of ACP 1 and 2 to gain a deeper understanding of your investment und liquidity management.
64. We have been well acquainted with the MAI appraisals for 2, 5 decades. Through an exemplary evaluation of some examples, we can adequately understand the role that external expertise plays in TSO purchasing decisions.
65. Exchange rate risk: What' your forecast in that manner? Are there any reflections to hedge the USD? If you for ex. lose 10 % on distribution payments because of exchange rate losses you might have a reduction of 0,8 % = 7,2 %?

I'd be lucky to experience your point of view, either by personal contact, by phone, by skype conference or just by written words and for examination (confidentially) delivered further documents.

Yours Sincerely

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