



**COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No. FSD of 2023

**IN THE MATTER OF SECTION 94 OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF PIONEER MERGER CORP.**

PETITION

To: The Grand Court of the Cayman Islands

The Petition of Funicular Funds, LP (the "**Petitioner**") of 2261 Market Street, San Francisco, California, United States, shows that:

- 1 Pioneer Merger Corp. (the "**Company**") was incorporated as an exempted company with registration number 367259 on 21 October 2020 under the Companies Law (2020 Revision).
- 2 The registered office of the Company is at Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104.
- 3 The Petitioner is the owner of 2,516,534 Class A ordinary shares in the Company, which is approximately 6.3% of the total outstanding Class A shares.
- 4 It is just and equitable that the Company be wound up on the grounds that:
 - (a) the substratum of the Company has failed; and
 - (b) the Petitioner has justifiably lost trust and confidence in the management of the Company

for the reasons set out below.

Background

5 The Company was set up as a blank-cheque corporation (also known as a SPAC) by Alpha Wave Global, LP (“**Alpha Wave**”), a hedge fund formerly known as Falcon Edge Capital. The purpose of the Company was to consummate a merger or similar business combination with one or more businesses or entities, which was to be referred to as an “*initial business combination*”.

6 The Company is operated by its Sponsor, Pioneer Merger Sponsor LLC (“**Pioneer Sponsor**”), an entity created and controlled by Alpha Wave and its senior personnel. The Management of the Company is made up of the following individuals, the majority of whom are associated with Pioneer Sponsor and Alpha Wave:

- (a) Jonathan Christodoro (Chairman);
- (b) Rick Gerson (Co-President);
- (c) Oscar Salazar (Co-President and Director)
- (d) Ryan Khoury (Chief Executive Officer);
- (e) Scott Carpenter (Chief Operating Officer);
- (f) Matthew Corey (Chief Financial Officer);
- (g) Mitchell Caplan (Director); and
- (h) Todd Davis (Director).

7 Class A shares in the company were distributed by way of an initial public offering (the “**IPO**”). The Company issued 40,250,000 units, which comprised one Class A share and one third of a warrant, at a cost of US\$10 per unit at the closing of the initial public offering on 12 January 2023.¹ The proceeds of the IPO of US\$402,500,000 were to be held in a trust account pending the completion of an initial business combination (which they would be used to consummate).

8 In addition, the Company issued 10,062,500 Class B ordinary shares to:

- (a) Pioneer Sponsor (9,942,500 shares);²
- (b) Oscar Salazar (40,000 shares);
- (c) Todd Davis (40,000 shares); and
- (d) Mitchell Caplan (40,000).

¹ Each full warrant entitled the holder to purchase a Class A share for US\$11.50.

² The beneficial owner of the Sponsor is Rick Gerson.

- 9 The Class B shares were initially issued to Pioneer Sponsor for US\$0.002 each (for a total consideration of US\$25,000). Pioneer Sponsor subsequently transferred the shares listed above to Mr Salazar, Mr Davis and Mr Caplan. Pioneer Sponsor also purchased 6,700,000 private placement warrants for US\$1.50 each simultaneously with the closing of the IPO, contributing US\$10,100,000 to the capital of the company. Each such warrant entitled Pioneer Sponsor to purchase a Class A share for US\$11.50 per share.
- 10 Under the Company's Articles of Association (the "**Articles**") and the IPO Prospectus (the "**Prospectus**") the Company had a period of 24 months from the IPO to consummate an initial business combination, failing which the IPO proceeds were to be returned to the holders of the Class A shares in the Company and the Class B shareholders would receive nothing. If the Company were to successfully complete an initial business combination, the Class B shares would automatically convert into Class A shares on a one-to-one basis.
- 11 The structure set out above was intended to result in the holders of the Class A shares receiving an 80% interest in the combined entity following the initial business combination in exchange for funding the merger or acquisition, with the holders of the Class B shares receiving a 20% interest in exchange for identifying and negotiating the initial business combination with a target company.

The Articles

- 12 The Articles provide, broadly, that the holders of Class A and Class B shares are to be treated alike, save that: i) the appointment of directors is reserved to Class B shareholders; and ii) receipt of the funds held in the trust account is reserved to Class A shareholders. Otherwise, the Articles provide that shareholders in the company are to be treated *pari passu*.
- 13 In particular, Article 17.1 provides that:

"The rights attaching to the Class A Shares and Class B Shares shall rank pari passu in all respects, and the Class A Shares and Class B Shares shall vote together as a single class on all matters (subject to the Variation of Rights of Shares Article and the Appointment and Removal of Directors Article hereof) with the exception that the holder of a Class B Share shall have the conversion rights referred to in this Article." [emphasis added]

- 14 Similarly, Article 44.1(b) provides that:

"if the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the Company's issued share capital at the commencement of the winding

up, the surplus shall be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding up subject to a deduction from those Shares in respect of which there are monies due, of all monies payable to the Company for unpaid calls or otherwise.”

15 These Articles are unambiguous, and require the directors of the Company to treat the holders of Class A and Class B shareholders on the same basis save where the Articles specifically provide otherwise. They also require that where the assets of the Company (including the funds in the trust account and any other assets) exceed the issued share capital of the company at the commencement of any winding up, that the surplus is to be distributed on a *pari passu* basis among the shareholders of the Company.

16 Relevantly, Article 49.7 provides that:

“In the event that the Company does not consummate a Business Combination by 24 months from the consummation of the IPO, or such later time as the Members may approve in accordance with the Articles, the Company shall:

- (a) cease all operations except for the purpose of winding up;*
- (b) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-Share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest earned on the funds held in the Trust Account and not previously released to the Company (less taxes payable and up to US\$100,000 of interest to pay dissolution expenses), divided by the number of then Public Shares in issue, which redemption will completely extinguish public Members' rights as Members (including the right to receive further liquidation distributions, if any); and*
- (c) as promptly as reasonably possible following such redemption, subject to the approval of the Company's remaining Members and the Directors, liquidate and dissolve,*

subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and other requirements of Applicable Law.”

Disclaimer of rights

17 Notwithstanding the Articles set out above, at or around the time of the IPO, Pioneer Sponsor and each of the members of the management of the Company set out in paragraph 6 above, save for Mr Salazar, entered into a Sponsor Agreement with the Company. Under this agreement, Pioneer Sponsor and each of the relevant individuals, referred to as an “Insider” in the Sponsor Agreement, disclaimed any interest or claim of any kind in or to the monies held in the trust account or any other asset of the Company as a result of any liquidation of the Company with respect to any Class B shares they held.

THIS PETITION is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref:MGM/SKE/00495-41516).

- 18 Likewise, the IPO prospectus for the Company, which the management of the Company approved and distributed, stated that *“the founder shares will be worthless if we do not complete an initial business combination”* and the Insiders *“will lose their entire investment.”*³ These statements record what the Sponsor and the Insiders had agreed: that they had disclaimed any interests they might have had in assets of the Company as holders of Class B shares (as distinct from holders of Class A shares following the conversion of Class B shares on a successful business combination).

Proposed initial business combination

- 19 On 27 May 2021, the Company announced that it had entered into a Business Combination Agreement (the **“Combination Agreement”**) with Acorns Grow Incorporated (**“Acorns”**), a wealth manager that offers a mobile application for simplified saving and investing. The Petitioner understands that the President of the Company, Mr Christodoro, attended the same university, and was a member of the same fraternity as both the CEO and Chairman and the CIO of Acorns.⁴
- 20 The Combination Agreement provided for the Company to merge with Acorns on the basis of a pre-money valuation of Acorns of US\$1.5 billion, and that this combination was to take place in the second half of 2021.

Failure of the initial business combination

- 21 Notwithstanding the entry into the Combination Agreement, the Petitioner understands that in late 2021 Acorns determined that it no longer wished to proceed with the initial business combination. By December 2021, the Company had not sought shareholder approval to proceed with the combination, which was a prerequisite to completion of the transaction.
- 22 In early January 2022, the Company disclosed that the proposed initial business combination with Acorns had fallen through, as Acorns had determined not to proceed with the transaction. Instead, Acorns proceeded with a private funding round in which it was valued at approximately US\$1.6 billion.
- 23 The Combination Agreement specifically provided that the Company was entitled to *“an*

³ The term “founder shares” was used to refer to the Class B shares in the IPO documents.

⁴ The CEO and Chairman of Acorns is Mr Noah Kerner, the CIO of Acorns is Mr Seth Wunder.

injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement.” Furthermore, Acorns expressly agreed that it would “*not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement.*”

- 24 For reasons which have never been explained, the Company never sought to enforce the Combination Agreement and complete the initial business combination. Instead, on 3 January 2022, a Termination Fee Agreement was entered between Acorns and Pioneer Sponsor pursuant to which Acorns would pay the Company a break fee of US\$17.5 million. In addition, if the Company did not complete an alternative initial business combination on or before 15 December 2022, Acorns agreed to pay the Company an additional US\$15 million, for a total of US\$32.5 million, by no later than 22 December 2022 (the “**Break Fee**”).

Subsequent events

- 25 The Company never identified an alternative initial business combination. On 15 December 2022, the Company announced that, having failed to identify a new transaction, it would not consummate an initial business combination within the required time frame, and would dissolve. This announcement triggered Acorn’s obligation to pay the additional US\$15 million to the Company.
- 26 On 15 December 2022, the Company announced that it would redeem the Class A shareholders on 13 January 2023 in exchange for the IPO proceeds held in the trust account and “*no other amounts.*” The Break Fee would then be distributed to the holders of the Class B shares.

Failure of substratum

- 27 The Company was formed for a single purpose: to consummate an initial business combination within 24 months of the date of its IPO. This purpose was reflected in the Articles of the Company, as well as its IPO Prospectus, which provided that the assets of the Company would be returned to the Class A shareholders in the event that this purpose was not achieved. It is evident from the announcements made by and on behalf of the Company that it has failed to achieve this purpose, and that there is now no prospect that it will do so.

- 28 In the circumstances, the Company's substratum has unquestionably been lost, and for this reason the court should order that it be wound up on the just and equitable ground pursuant to section 92(e) of the *Companies Act*.

Loss of trust and confidence in management

- 29 As set out above, Pioneer Sponsor and the management of the Company:
- (a) Established the Company for the sole purpose of completing an initial business combination;
 - (b) Marketed the Company on the bases that:
 - (i) they would receive 20% of the combined entity in the event of an initial business combination, and nothing otherwise; and
 - (ii) the assets of the Company would be returned to the Class A shareholders in the event that no initial business combination was consummated;
 - (c) In support of the above, expressly disclaimed any right to assets of the Company on a liquidation;
 - (d) Negotiated an initial business combination with Acorn, which is controlled by affiliates of the Chairman of the Company;
 - (e) Caused the Company not to take steps necessary to consummate the agreed initial business combination;
 - (f) Caused the Company not to take steps available to it enforce the Combination Agreement against Acorns, agreeing instead that Acorns would pay the Company the Break Fee in lieu performing its obligations;
 - (g) Despite the entitlement of Class A shareholders under the Articles to a *pari passu* share of the assets of the Company, determined to pay them the monies in the trust account and no other amounts; and
 - (h) Despite the matters set out above, determined to divert the Break Fee to themselves, by way of a distribution to the Class B shareholders following a redemption of the Class A shareholders.
- 30 As set out in more detail below, this course of action by Pioneer Sponsor and the management of the Company is in clear breach of:
- (a) the Articles;
 - (b) the Sponsor Agreement; and
 - (c) the fiduciary duties of the directors of the Company.

- 31 In addition, there is a clear and irreconcilable conflict of interest between the Company and those directors who: i) are Class B shareholders themselves; or ii) have any economic interest in, or duties to, Pioneer Sponsor or Alpha Wave.
- 32 The directors are required to exercise their power to manage the affairs on the Company only for proper purposes in the interests of the Company. In circumstances where the Company is solvent, the interests of the Company are the interests of the shareholders of the Company considered as a whole. The directors are also strictly prohibited from entering into arrangements in which they have a personal interest which conflicts with the interests of those to whom they owe their duties (in this case, the shareholders of the Company considered as a whole), or from making any profit from their position without the informed consent of the shareholders.
- 33 The course of conduct by the directors set out above entails them:
- (a) causing the Company to make distributions other than in accordance with the Articles;
 - (b) intentionally advancing the interests of the Class B shareholders at the expense of the Class A shareholders, by failing to enforce the Company's contractual rights under the Sponsor Agreement; and
 - (c) diverting the windfall to the Company in the form of the Break Fee, which represents the sole profit it has made in its two years of existence, to themselves as the only Class B shareholders.
- 34 In light of the serious breaches of their duties which this conduct would entail, the Petitioner wrote to the boards of the Company and Pioneer Sponsor on 10 January 2023, requesting confirmation that they would not proceed with their announced proposal. The Petitioner has received no response to its letter as of the date of this Petition.
- 35 In these circumstances, the Petitioner has justifiably lost trust and confidence in the management of the Company. In particular, it is evident that the Petitioner cannot trust the management of the Company to adhere to: the Articles; their duties to the shareholders of the Company as a whole; or a contract they entered with the Company, instead diverting assets of the Company to themselves in clear breach of all of these.

Conclusion

36 In light of the above, the Company is liable to be wound up on the just and equitable basis without delay. In the circumstances, it is imperative that this winding up be conducted by an independent professional, and under the supervision of this honourable court.

AND THE PETITIONER HUMBLY PRAYS AS FOLLOWS:

- (1) The Company may be wound up by the Court under the provisions of the Companies Act;
- (2) Tammy Fu and Eleanor Fisher of EY-Parthenon be appointed as Joint Official Liquidators of the Company with power to act jointly and severally (the "JOLs");
- (3) The JOLs shall not be required to give security for their appointment;
- (4) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, and staff whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties;
- (5) The JOLs be at liberty to apply generally;
- (6) The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company, to be taxed on the indemnity basis if not agreed with the JOLs;
- (7) Such other orders and directions may be made as the Court thinks fit.

Dated: 12 January 2023



CAMPBELLS LLP
Attorneys-at-Law for the Petitioner

Note: It is intended to serve this Petition on:

- 1) The Company at its registered office; and
- 2) The Registrar of Companies.

THIS PETITION is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref:MGM/SKE/00495-41516).

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on
Law Courts, George Town, Grand Cayman on 2023 at 2023 will be heard at the
a.m./p.m.

THIS PETITION is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref:MGM/SKE/00495-41516).