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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:
Three Arrows Capital, Ltd.,
Debtor in a Foreign Proceeding

Chapter 15

Case No. 22-10920 (MG)

**SUPPLEMENTAL FILING (A) IN SUPPORT OF THE FOREIGN
REPRESENTATIVES' MOTION FOR AN ORDER (I) HOLDING KYLE
LIVINGSTONE DAVIES TO BE IN CIVIL CONTEMPT FOR FAILURE TO COMPLY
WITH MARCH 30, 2023 COURT ORDER; AND (II) GRANTING SANCTIONS
AGAINST KYLE LIVINGSTONE DAVIES; AND (B) UPDATING THE COURT ON
RECENT DEVELOPMENTS**

The Foreign Representatives submit this supplemental filing for two reasons: *First*, to update the Court on recent developments relating to Kyle Livingstone Davies in support of the *Motion for an Order (I) Holding Kyle Livingstone Davies to be in Civil Contempt for Failure to Comply with March 30, 2023 Court Order; and (II) Granting Sanctions Against Kyle Livingstone Davies* (the “Motion for Contempt and Sanctions”), filed on June 14, 2023 and scheduled to be heard on August 8, 2023 at 11:00 a.m. prevailing Eastern Time.¹ As discussed in more detail below,

¹ The Foreign Representatives note that nothing in this filing has changed since submission to chambers on July 27, 2023. The Foreign Representative are in receipt of *Non-Party Kyle Davies': (I) Opposition to Motion for Contempt; and (II) Cross-Motion to Vacate Orders*, and will file their reply in advance of the August 8, 2023 hearing before this Court.

Davies continues to ignore his discovery obligations and flout this Court's orders with even more egregious behavior. Davies is indisputably aware of these Court proceedings, but rather than comply with this Court's orders, he has spent his time publicly promoting his next ventures—which include a business that seeks to profit from Three Arrows's bankruptcy, and does so by improperly using Three Arrows's name and logo—and bringing a U.S. lawsuit despite refusing to participate in this one.

Second, further to this Court's request to be kept apprised of global developments relating to Three Arrows, this supplement provides a general update on: (a) the insolvency proceedings currently pending in the British Virgin Islands ("BVI") before the Eastern Caribbean Supreme Court in the High Court of Justice Virgin Islands (Commercial Division) (the "BVI Court") and captioned *In re Three Arrows Capital Limited*, Case No. BVIHCOM2022/0119 (June 27, 2022); (b) the proceeding in Singapore pending before the Honorable Justice Vinodh Coomaraswamy (the "Singapore Court"); (c) developments regarding a potential Chapter 11 filing by the Foreign Representatives on behalf of Three Arrows; and (d) adverse proceedings initiated by the Genesis Debtors (as defined below) and BlockFi Debtors (as defined below).

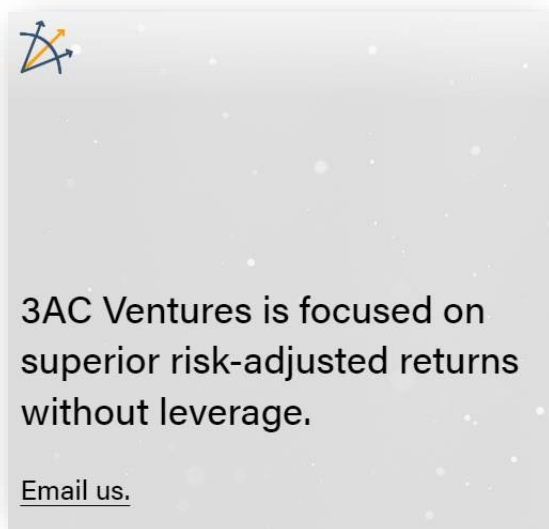
I. DAVIES CONTINUES TO PROMOTE HIS NEW VENTURES AND PROFIT FROM THREE ARROWS'S BANKRUPTCY, WHILE IGNORING THE SUBPOENA AND THIS COURT'S ORDERS DIRECTING HIS COMPLIANCE

Rather than fulfill his obligations to participate in discovery in this proceeding—and comply with this Court's express orders requiring him to do so—Davies has devoted his time and attention to publicly promoting his next crypto endeavor. In April 2023, Davies and Su Zhu (collectively the "Founders" of Three Arrows Capital) launched a new venture together called OPNX that purports to be "a solution and home for those harmed by crypto crises."¹ OPNX, short

¹ Our Story, OPNX, available at <https://opnx.com/about-us> (last accessed July 25, 2023).

for Open Exchange, is a crypto-trading platform that purportedly allows users to trade cryptocurrency bankruptcy claims.² Davies and the other OPNX founders portray it as a solution for the \$20 billion market of claimants “desperately looking” for relief in the wake of the crypto collapse, including their “creditors.”³

In early June, OPNX’s Twitter account announced “OPNX’s ecosystem partner,” a new entity called “3AC Ventures.” The tweet included a link to the 3AC Ventures website, which states that it is “focused on superior risk-adjusted returns without leverage.”⁴ Beyond this brief description, the website provides very little information; it lists only a contact email and one of the company’s “Select Investments.” Improperly, the website features the original Three Arrows logo. Following the announcement, Davies tweeted “3AC is dead, long live 3AC Ventures.”



3AC Ventures’ use of the same logo and a similar name as Three Arrows has caused confusion among those who believe that the two entities are related. The venture has been publicly

² Shaurya Malwa, *OPNX Exchange, Which Offers FTX Claims Trading, Led by Three Arrows Founders, Is Now Live*, CoinDesk (April 4, 2023), available at <https://www.coindesk.com/markets/2023/04/04/opnx-exchange-which-offers-ftx-claims-trading-led-by-three-arrows-founders-is-now-live/>.

³ Our Story, OPNX, available at <https://opnx.com/about-us> (last accessed July 25, 2023).

⁴ <https://www.3acventures.com/> (last accessed July 25, 2023).

misinterpreted as Three Arrows's "surprise comeback"⁵ in the guise of a venture capital firm, or as a "fork of the fallen 3AC entity."⁶ For example, an article about a recent U.S.-based defamation lawsuit filed by OPNX referred to OPNX as "3 Arrows Capital's 'ecosystem partner.'"⁷

Likewise, in mid-June, in connection with promotional efforts, OPNX distributed gift baskets branded with the Three Arrows logo. The official OPNX Chinese account tweeted an image of the baskets with the Three Arrows branding located directly under the OPNX logo. Davies retweeted and replied to images users posted of the gift baskets they received. Despite previously tweeting that "3AC is dead," Davies has continued to associate the Three Arrows brand with OPNX through both the use of the Three Arrows logo and the similarity of 3AC Ventures' branding. One user commented on Twitter, "Same logo, same people. Same name. While running away from creditors. The audacity is transdimensional in magnitude."⁸

⁵ Brandy Betz and Oliver Knight, *Bankrupt Hedge Fund 3AC's Return as a VC Stirring Up Crypto Community*, CoinDesk (June 21, 2023), available at <https://www.coindesk.com/business/2023/06/21/bankrupt-hedge-fund-3acs-return-as-a-vc-stirring-up-crypto-community/>.

⁶ *3AC's Brain Child OPNX Announces New Ecosystem Partner 3AC Ventures*, TradingView (June 21, 2023), available at <https://www.tradingview.com/news/ethereumworldnews:4b7ad45b1094b:0-3ac-s-brain-child-opnx-announces-new-ecosystem-partner-3ac-ventures/>.

⁷ Oliver Knight and Danny Nelson, *OPNX Files Defamation Lawsuit Against Mike Dudas, Issues Justice Tokens*, CoinDesk (June 22, 2023), available at <https://www.coindesk.com/business/2023/06/22/opnx-files-defamation-lawsuit-against-mike-dudas-issues-justice-tokens/>. This lawsuit is

⁸ Andrew Asmakov, *Three Arrows Co-Founders Are Back With a New VC Fund. Is Anyone Buying?*, Decrypt (June 22, 2023), available at <https://decrypt.co/145792/three-arrows-co-founders-are-back-with-a-new-vc-fund-is-anyone-buying>.



The OPNX website lists out in which cases claims will soon be available to trade on the platform, *and this list includes claims in Three Arrows's bankruptcy*.⁹ To grab a share of the Three Arrows claims market, Davies has further stated that he intends to provide additional returns to Three Arrows creditors who are "early" to trading their bankruptcy claims on the platform.¹⁰ In mid-July 2023, OPNX began allowing FTX and Celsius claims to be onboarded and converted into tokens.

Moreover, in the weeks following service of the Foreign Representatives' Motion for Contempt and Sanctions on June 14, 2023, Davies has continued his prolific use of Twitter, further

⁹ Claims Overview, OPNX, available at <https://opnx.com/claims> (last accessed July 25, 2023).

¹⁰ MK Manoylove, *Kyle Davies evokes karma, says he'll donate some OPNX earnings to 3AC creditors*, The Block (July 3, 2023), available at <https://www.theblock.co/post/237613/kyle-davies-evokes-karma-says-hell-donate-some-opnx-earnings-to-3ac-creditors?>.

eliminating any doubt that he is well aware of this Court’s orders requiring his compliance, which were served on him via Twitter. Since June 14, 2023, Davies has tweeted or retweeted over 60 times. These tweets include advertisements for his new ventures, OPNX and 3AC Ventures, and the following retweet blaming FTX for Three Arrows’s downfall:



Davies has also found time to engage in public interviews while ignoring the Foreign Representatives. On July 3, 2023, he participated in a live interview on Twitter that lasted for over two-and-a-half hours.¹¹ During the interview, Davies acknowledged Three Arrows’s insolvency and the Foreign Representatives’ role in liquidation proceedings. Davies claimed that the Foreign Representatives are incentivized to “drag out the process” of liquidation, despite the fact that he has repeatedly ignored his obligations to the Three Arrows estate and refused to produce necessary documents and information that would assist the Foreign Representatives in completing their duties in a timely and efficient manner. Davies also claimed that he and Zhu will “donate” funds collected through OPNX to Three Arrows creditors and claimed that a “number of [Three Arrows] creditors” have been made whole. When pressed on how Davies could be working on a new

¹¹ A recording of the interview can be found here: <https://twitter.com/i/spaces/1YqKDoqBLvOxV>.

venture while Three Arrows was in the midst of active liquidation, Davies claimed that creditors only stand to “benefit” from supporting OPNX.

Moreover, Davies has the time to voluntarily participate in other proceedings *in the United States*, while ignoring the Court’s orders in this one. As discussed above, on June 2, 2023, OPNX filed a defamation suit against venture capitalist Mike Dudas.¹² In other words, Davies appears to have sufficient time and resources to commence a lawsuit in the U.S.—and thereby commit to participate in discovery—yet refuses to comply with this Court’s discovery orders. Davies seems to want to participate in only the U.S. proceedings which benefit his new ventures.

For the reasons explained above and in the papers filed in support of the Motion for Contempt and Sanctions, Davies is aware of these proceedings, has demonstrated he has the time and capacity to respond, has sought to profit from Three Arrows’s name and bankruptcy, but has intentionally decided to thwart this Court’s orders. This is not an ordinary failure to comply with a discovery order—this is an extreme, blatant and intentional flouting of this Court’s order, to the severe and continued detriment of the Three Arrows estate. Disregarding civil discovery orders has led to serious consequences. *See, e.g., U.S. v. Brennerman*, 816 F. App’x 583, 587 (2d Cir. 2020) (affirming criminal contempt conviction based on disregard of civil discovery orders). As described in the Motion for Contempt and Sanctions, sanctions of \$10,000 per day are appropriate here.

¹² The lawsuit alleges that Mr. Dudas “published defamatory comments about the company between February and March 2023,” around the time Davies and Zhu unveiled the venture. Oliver Knight and Danny Nelson, *OPNX Files Defamation Lawsuit Against Mike Dudas, Issues Justice Tokens*, CoinDesk (June 22, 2023), available at <https://www.coindesk.com/business/2023/06/22/opnx-files-defamation-lawsuit-against-mike-dudas-issues-justice-tokens/>. The court summons does not specify any of the allegedly defamatory comments. On July 7, 2023, Mr. Dudas filed a demand for a complaint, which is due on July 27, 2023.

II. ADDITIONAL UPDATES ON OTHER PROCEEDINGS

A. The BVI Proceeding

On June 26, 2023, the Foreign Representatives filed a draft application in the BVI court seeking sanction (*i.e.*, approval) for the Foreign Representatives to file debt claims for approximately \$70 million against Zhu and Kelly Kaili Chen, Davies's wife (the "Sanction Application"). In particular, on June 27, 2022, the day that Three Arrows commenced liquidation proceedings, Zhu and Chen requested that \$17 million of shares in the Debtor's feeder fund be redeemed and that the unpaid redemption proceeds be treated as a loan from Zhu and Chen to the Three Arrows, or that unpaid redemption proceeds be credited against their indebtedness to Three Arrows. The debt claims seek to set aside these credits. The Foreign Representatives require permission from the BVI Court in order to pursue these debt claims. A hearing on the Sanction Application is scheduled on August 14, 2023.

Further, as has been widely reported, once the Foreign Representatives receive sanction from the BVI Court to file the debt claims against Zhu and Chen, they intend to file additional claims against the Founders under the BVI Insolvency Act. These claims seek to recover \$1.3 billion from the Founders.¹³

B. Proceedings in Singapore

The Foreign Representatives recently obtained a sealed summons to be issued to Zhu in respect of the "Sing" committal application from the Singaporean Court. In Singapore, committal proceedings penalize a party for failing to comply with a court order or judgment and require an application and service of the summons on the party who failed to comply with the court's order or

¹³ Jonathan Randles, Three Arrows Liquidators Seek \$1.3 Billion From Fund's Founders, Bloomberg (June 27, 2023), available at <https://www.bloomberg.com/news/articles/2023-06-27/three-arrows-liquidators-seek-1-3-billion-from-fund-s-founders?leadSource=verify%20wall>.

judgment.¹⁴ Here, the Foreign Representatives seek to penalize Zhu for his failure to comply with an order from the Singaporean Court. The Foreign Representatives attempted to serve Zhu at his Yarwood property in Singapore (which, upon information and belief, is owned by a trust controlled by Zhu and/or his wife), but have been unsuccessful to date at effectuating service.

C. Potential Chapter 11 Filing by the Foreign Representatives

On May 24, 2023, the Foreign Representatives submitted an application with the BVI Court seeking that court's authorization (which is referred to in the BVI as "sanction") to commence a Chapter 11 case in the United States on behalf of Three Arrows (the "Sanction Application"). A Chapter case would, among other things, permit the Three Arrows estate to pursue claims under sections 544 and 547 of the Bankruptcy Code against multiple parties, which the Foreign Representatives believe may result in aggregate claims in excess of \$1.5 billion. The BVI Court held hearings on the Sanction Application on July 21, 2023 and July 24, 2023.

On July 26, 2023, the BVI Court denied the Foreign Representatives' Sanction Application. The Foreign Representatives reserve all rights of the Three Arrows estate and its creditors as to the Sanction Application and claims available under BVI and other applicable law.

D. Adverse Proceedings by the Genesis Debtors and BlockFi Debtors

1. *Genesis Chapter 11 Cases*

On January 19, 2023, Genesis Global Holdco, LLC, Genesis Global Capital, LLC, and Genesis Asia Pacific PTE LTD (collectively, the "Genesis Debtors") each filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York. The cases are pending before the Honorable Sean H. Lane, and are jointly administered under Case No. 23-10063.

¹⁴ See <https://www.judiciary.gov.sg/civil/committal-proceedings>.

a. Genesis Proofs of Claim & Claim Objection

On May 22, 2023, the Foreign Representatives filed three proofs of claim (the “Genesis POCs”) against Genesis Global Holdco, LLC (Claim No. 523), Genesis Global Capital, LLC (Claim No. 526), and Genesis Asia Pacific PTE LTD (Claim No. 527) in the Genesis Debtors’ Chapter 11 proceedings. Each of the Genesis POCs identified claims and causes of action that the Foreign Representatives believe, based on currently available information, that the Three Arrows estate has against the Genesis Debtors, including preference, conversion, and other avoidance claims under BVI, New York, Delaware, and other applicable law. The Foreign Representatives believe these claims to be over one billion dollars in aggregate amount (and would amount to hundreds of millions of dollars even if the Foreign Representatives’ claims are limited to those that are available outside of a plenary bankruptcy case).

On July 19, 2023, the Genesis Debtors filed the *Debtors’ First Omnibus Objection (Substantive) to Claim Nos 523, 526, and 527 Pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007 (No Liability)* [Genesis Dkt. No. 530] (the “Claims Objection”). The Genesis Debtors have proposed that the initial hearing on the Claims Objection will be a “Sufficiency Hearing” on August 24, 2023 at which the Genesis bankruptcy court will determine whether the Genesis POCs should be dismissed pursuant to Bankruptcy Rule 7012(b). The Foreign Representatives’ deadline to object to the Claims Objection is August 9, 2023.

b. Genesis Chapter 11 Plan

On June 13, 2023, the Genesis Debtors filed the *Amended Joint Plan of Genesis Global Holdco, LLC et al., Under Chapter 11 of the Bankruptcy Code* (the “Genesis Plan”) and the *Disclosure Statement with Respect to the Amended Joint Plan of Genesis Global Holdco, LLC et al., Under Chapter 11 of the Bankruptcy Code* (the “Genesis DS”) (Case No. 23-10063 (SHL))

(Bankr. S.D.N.Y.), Dkt. No. 427, 429). The deadline to object to Genesis DS is currently set for August 4, 2023, and the hearing to approve the Genesis DS is scheduled on August 11, 2023.

The Genesis Debtors propose to equitably subordinate Three Arrows's claims against them through the proposed Genesis Plan. The Foreign Representatives will submit to this Court that the Genesis Debtors' efforts to equitably subordinate Three Arrows's claims violates the automatic stay provided for under section 362 of the Bankruptcy Code and made applicable to this Chapter 15 case pursuant to this Court's *Order Granting Recognition Of Foreign Main Proceeding And Related Relief* (Dkt No. 47) (the "Recognition Order"). Accordingly, the Foreign Representatives intend to file a motion seeking an order enforcing of the automatic stay against the Genesis Debtors and staying their efforts to equitably subordinate Three Arrows's claims against them.

2. *BlockFi Chapter 11 Cases*

On November 28, 2022, BlockFi Inc. and its affiliated debtors (collectively, the "BlockFi Debtors")¹⁵ each filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the District of New Jersey (Trenton). The cases are pending before the Honorable Michael B. Kaplan and are jointly administered under Case No. 22-19361.

a. BlockFi Proofs of Claim

On March 31, 2023, the Foreign Representatives filed nine proofs of claim (the "BlockFi POCs") against BlockFi Inc. (Claim No. 15592), BlockFi Trading LLC (Claim No. 25923), BlockFi International Ltd. (Claim No. 25953), BlockFi Wallet LLC (Claim No. 25958), BlockFi Investment Products LLC (Claim No. 25961), BlockFi Investment Products LLC (Claim No. 25964), BlockFi Services Inc. (Claim No. 25984), BlockFi Ventures LLC (25985), and BlockFi

¹⁵ The BlockFi Debtors are BlockFi Inc.; BlockFi Trading LLC; BlockFi Lending LLC; BlockFi Wallet LLC; BlockFi Ventures LLC; BlockFi International Ltd.; BlockFi Investment Products LLC; BlockFi Services, Inc.; and BlockFi Lending II LLC.

Lending LLC (Claim No. 26292) in the BlockFi Debtors' Chapter 11 proceedings. Each of the BlockFi POCs identified claims and causes of action that the Foreign Representatives believe, based on currently available information, that the Three Arrows estate has against the BlockFi Debtors, including preference and other avoidance claims under BVI and other applicable law. The Foreign Representatives believe these claims to be over two hundred million dollars in aggregate amount. As of the date hereof, the BlockFi Debtors have not filed any objection to the BlockFi POCs.

b. BlockFi Chapter 11 Plan

On June 28, 2023, the BlockFi Debtors filed the *Amended Joint Chapter 11 Plan of BlockFi Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "BlockFi Plan") and the *Disclosure Statement Relating to the First Amended Joint Chapter 11 Plan of BlockFi Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "BlockFi DS") in the BlockFi Debtors' Chapter 11 cases (Case No. 22-19361 (MBK) (Bankr. D.N.J.), Dkt. Nos. 1132, 1133).

Like the Genesis Debtors, the BlockFi Debtors propose in the BlockFi DS to equitably subordinate Three Arrows's claims against them through their proposed Chapter 11 plans. The BlockFi Debtors raise the same arguments in the BlockFi DS (almost *verbatim*) as the Genesis Debtors in support of their equitable subordination efforts against Three Arrows.

On July 5, 2023, the Foreign Representatives filed an objection to the BlockFi DS (BlockFi Dkt. No. 1153), arguing, among other things, that the BlockFi Debtors' attempt to equitably subordinate Three Arrows's claims against them pursuant to an expedited plan confirmation timeline is procedurally inappropriate and violates the Foreign Representatives' due process rights, and that the disclosures set forth in the BlockFi DS regarding the basis for such equitable subordination are inadequate. The Foreign Representatives will submit to this Court that the

BlockFi Debtors violated the automatic stay provided for under section 362 of the Bankruptcy Code and made applicable to this Chapter 15 case pursuant to the Recognition Order. Accordingly, the Foreign Representatives intend to file a motion seeking an order enforcing of the automatic stay against the BlockFi Debtors and staying their efforts to equitably subordinate Three Arrows's claims against them.

On July 26, 2023, the BlockFi Debtors filed a *Notice of Amended Confirmation Timeline* (BlockFi Dkt. No. 1276) stating that they intend to seek conditional approval of the BlockFi DS at a hearing to be set for August 1, 2023 and confirmation of the BlockFi Plan at hearings beginning on September 27, 2023. In this notice, the BlockFi Debtors indicated that they will file amended versions of the BlockFi Plan and BlockFi DS in preparation for the proposed hearing on August 1, 2023.

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Dated: August 1, 2023
Los Angeles, California

Respectfully submitted,

/s/ Nima H. Mohebbi

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