

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

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| In re INFINITY Q DIVERSIFIED ALPHA FUND SECURITIES LITIGATION |) Index No. 651295/2021)) <u>CLASS ACTION</u>)) Part 53: Justice Andrew S. Borrok |
| This Document Relates To: |) |
| The Consolidated Action |) |
| DOMINUS MULTIMANAGER FUND, LTD., Individually and on Behalf of All Others Similarly Situated, |) Index No. 652906/2022) <u>CLASS ACTION</u>) Part 53: Justice Andrew S. Borrok |
| Plaintiff, |) |
| v. |) |
| INFINITY Q CAPITAL MANAGEMENT LLC, et al., |) Defendants.) |

AFFIRMATION OF PHILLIP KIM

I, PHILLIP KIM, an attorney duly admitted to practice before the courts of the State of New York, affirm the following to be true under penalty of perjury:

1. I am a member of the Bar of the State of New York and a partner of The Rosen Law Firm, P.A., Co-Lead Counsel in the above-captioned action.
2. I submit this affirmation in support of Lead Plaintiffs’ proposed Order to Show Cause as to why Preliminary Approval of the Settling Parties’ Amended Stipulation of Settlement

(the “Stipulation” attached as Exhibit 1 hereto)¹ should not be granted. As the Stipulation explains, the Settlement resolves the claims raised in this consolidated action *In re Infinity Q Diversified Alpha Fund Securities Litigation*, Index No. 651295/2021 and the related *Dominus Multimanager Fund, Ltd. v. Infinity Q Capital Management LLC, et al.*, Index No. 652906/2022 (together, the “State Action”), as well as the claims raised in *In re Infinity Q Diversified Alpha Fund and Infinity Q Volatility Alpha Fund Securities Litigation* (formerly known as *Yang v. Trust for Advised Portfolios, et al.*), Case No. 1:21-cv-01047-FB-MMH (E.D.N.Y) (the “Federal Action”). Settling Defendants do not oppose this Order to Show Cause.

3. Pursuant to CPLR § 2217(b), I state that on August 17, 2022, Lead Plaintiffs and certain defendants executed a Stipulation of Settlement (NYSCEF Doc. 7) and filed an unopposed [Proposed] Order to Show Cause, which sought preliminary approval of that settlement (NYSCEF Doc. 5). While that August 17 Order to Show Cause was pending before the Court, the parties reached a global settlement, which is now the subject of the instant Order to Show Cause.

4. At this stage, Lead Plaintiffs seek only preliminary approval of the proposed Settlement.

5. The proposed Preliminary Approval Order is attached as Exhibit A to the Stipulation.

6. The proposed Notice of Proposed Settlement of Class Action (“Notice”) to Class Members and basic Proof of Claim and Release form (“Proof of Claim”) are attached as Exhibits A-1 and A-2, respectively, to the Stipulation. The proposed Notice comports with the

¹ Unless otherwise defined herein, all capitalized terms shall maintain the same meanings as those set forth in the Stipulation. The Stipulation supersedes the August 17th, 2022 Stipulation of Settlement (NYSCEF Doc. 160) in the State Action and resolves all of the claims in the State Action.

requirement in CPLR § 908 that class actions should not be settled without the approval of this Court and notice to the class.

7. Lead Plaintiffs and Lead Counsel, based on their experience, evaluation of the facts and applicable law, their recognition of the Settlement amount, and the risk and expense of continued litigation, submit that the proposed Settlement is fair, reasonable, adequate, and is in the best interests of the Class.

8. The amount of the Settlement Fund is up to \$48,000,000. After deduction of any Court-awarded attorneys' fees and expenses, any Court-awarded sum to Lead Plaintiffs for representing the Class, Notice and Administrative Expenses, Taxes and Tax Expenses, and any other Court-approved deductions, the amount remaining in the Settlement Fund will be distributed on a pro rata basis to all Class Members who timely submit a valid claim form.

9. Among other things, granting preliminary approval to the Settlement will, subject to Final approval of the Settlement, result in the creation of the Class, which will consist of all Persons or entities that either: (i) purchased or otherwise acquired Investor Shares in the Infinity Q Diversified Fund (the "Diversified Fund") (Ticker symbol IQDAX) and/or Institutional Shares in the Diversified Fund (Ticker symbol IQDNX) (collectively, "Diversified Fund Shares") between February 22, 2016, and February 22, 2021, both dates inclusive (the "Class Period"); and/or (ii) invested through either the Infinity Q Volatility Alpha Fund, L.P. or the Infinity Q Volatility Alpha Offshore Fund, Ltd. (the "Volatility Fund") during the Class Period. Excluded from the Class are: (i) Defendants in the Litigation, (ii) all officers, trustees, and directors of those Defendants; (iii) members of any individual Defendants' immediate families; (iii) any Defendant's legal representatives, heirs, successors or assigns; and (iv) any entity in which any of foregoing excluded Persons has or had a controlling majority ownership interest.

10. After Notice has been disseminated, Class Members will have the option of objecting to the Settlement or opting out to exclude themselves from the Settlement. Class Members will also have the option to submit the Proof of Claim and receive their pro rata portion of the Settlement Fund, after deductions for: (i) the cost of Notice and Administrative Expenses; (ii) litigation expenses; (iii) attorneys' fees; and (iv) an award for Lead Plaintiffs. Class Members who do not opt out will be bound by the Settlement.

11. As described in the proposed Preliminary Approval Order, Lead Plaintiffs will present the Settlement to the Court for Final approval through formal motion practice. At that time, Lead Plaintiffs will explain why Final approval of the Settlement, Plan of Allocation, and request for attorneys' fees and expenses and award to Lead Plaintiffs for their representation of the Class should be granted and will also address any objections submitted by Class Members.

12. If the Court grants preliminary approval of the Settlement, Lead Plaintiffs respectfully submit the following procedural schedule for the Court's consideration:

| Event | Time for Compliance |
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| Deadline for mailing the Notice and Proof of Claim to Class Members | 21 calendar days after entry of the Preliminary Approval Order ("Notice Date") |
| Deadline for publishing the Summary Notice | 10 calendar days after the Notice Date |
| Deadline for Class Members to file Proof of Claims | 90 calendar days after the Notice Date |
| Filing of memoranda in support of approval of the Settlement and Plan of Allocation and in support of Fee and Expense Application | 35 calendar days prior to the Settlement Hearing |
| Deadline for Class Members to submit objections or exclusion requests | 21 calendar days prior to the Settlement Hearing |
| Filing of reply memoranda | 7 calendar days before the Settlement Hearing |
| Settlement Hearing | At least 90 calendar days following entry of the Preliminary Approval Order, at the Court's convenience |

13. Based on the foregoing, Lead Plaintiffs respectfully request that the Court preliminarily approve the Settlement, authorize the Notice to be disseminated to the Class, as set forth in the attached exhibits, and schedule a Settlement Hearing to consider whether the Settlement should be fully and finally approved on a date at least ninety (90) days from the date upon which preliminary approval is granted.

Executed this 7th day of September, 2022, at New York, New York.


PHILLIP KIM