

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE COUNTY**

CHARLES SHERCK,
6326 Barrel Race Drive
Colorado Springs, CO 80923

Plaintiff,

Case No.

v.

Case type: 35004 Sale of Securities

U.S. BANCORP FUND SERVICES, LLC,
615 East Michigan Street
Milwaukee, WI 53202

JURY TRIAL DEMANDEDDefendant.

**CLASS ACTION COMPLAINT FOR
VIOLATION OF FEDERAL SECURITIES LAWS**

Plaintiff Charles Sherck ("Plaintiff") alleges the following upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, based upon an investigation conducted by counsel, which included, among other things, review of public filings with the United States Securities and Exchange Commission ("SEC"), and review of news reports, press releases and other publicly available documents.

I. INTRODUCTION

1. This action asserts federal securities law claims against Defendant U.S. Bancorp Fund Services, LLC ("U.S. Bank") for its role in making material misstatements and omissions in SEC filings and other public disclosures of the Infinity Q Diversified Alpha Fund (the "Fund").

2. The Fund is an open-end mutual fund that, until December 31, 2020, continuously offered shares to the public. The offering price of the Fund's shares was based on the Fund's Net

Asset Value, or “NAV,” which is required by law to be calculated daily based on the value of the securities held by the Fund, net of any liabilities.

3. U.S. Bank and its employees (who also served as officers and trustees of the Fund) were responsible for the vast majority of the Fund’s operations, including the valuation of the Fund’s securities holdings and publishing the Fund’s NAV on a daily basis.

4. A significant portion of the Fund’s securities holdings were comprised of derivative securities that do not have readily available market prices and must be valued based on a good faith assessment of the amount that the Fund could receive for those securities in a sale.

5. U.S. Bank informed investors that a “Valuation Committee”—consisting entirely of U.S. Bank employees—was responsible for overseeing valuation of securities without readily available market quotes, including the Fund’s derivatives, pursuant to procedures established by the Fund’s Board of Trustees (the “Board”).

6. Although the valuation process included certain information from the Fund’s investment adviser, Infinity Q Capital Management, LLC (“Infinity Q”), U.S. Bank represented to investors that it would review and obtain specific information supporting the valuations provided by Infinity Q. Those representations were false and misleading because U.S. Bank and the Valuation Committee did not follow the described process and otherwise failed to meaningfully oversee or independently review Infinity Q’s valuations.

7. In the absence of the oversight that U.S. Bank had informed investors it was providing, Infinity Q submitted fraudulent and inflated valuations for the Fund’s derivative investments. U.S. Bank incorporated those inflated valuations into the NAVs it calculated and published on behalf of the Fund on each trading day for months, causing investors who purchased shares of the Fund to significantly overpay for the Fund’s shares.

8. In February 2021, with no prior notice to investors, the Fund announced that its previously published NAVs were materially inaccurate and requested SEC permission to stop operating. The Fund would eventually admit that its NAV had been overstated by over \$500 million. It is now in the process of liquidation.

9. This class action seeks damages caused by U.S. Bank to investors pursuant to the Securities Act of 1933 (the “Securities Act”). The proposed class (the “Class”) consists of all persons, excluding Defendant and its officers, directors, and affiliates, who purchased or otherwise acquired Fund shares at inflated prices from January 1, 2019 through December 30, 2020 (the “Class Period”), and were damaged thereby.

II. PARTIES, JURISDICTION, AND VENUE

10. Plaintiff is a resident of Colorado Springs, Colorado and a 23-year veteran of the U.S. Air Force, where he held multiple positions within the Strategic Air Command, Space Command, Headquarters Air Force and Joint Chiefs of Staff relating to flight, missile and space operations. As set forth in the accompanying certification, Plaintiff purchased shares of the Fund pursuant and/or traceable to the Registration Statements and other Offering Materials (defined below) and has suffered damages as a result of the federal securities law violations alleged herein.

11. U.S. Bank is a Wisconsin limited liability company with its principal offices located at 615 East Michigan Street, Milwaukee, Wisconsin 53202.

12. This Court has personal jurisdiction over U.S. Bank because it is a domestic limited liability company with principal offices located in Wisconsin.

13. Venue is appropriate in Milwaukee County pursuant to Wis. Stat. 801.50(2)(a) because Defendant resides in Milwaukee County.

14. The claims asserted herein arise under and pursuant to §§ 11, 12(a) and 15 of the Securities Act.

15. This Court has jurisdiction pursuant to Article 7, Section 8 of the Wisconsin Constitution and Section 22 of the Securities Act, 15 U.S.C. § 77v (providing concurrent jurisdiction to state and federal courts).

16. This action is not removable to federal court pursuant to § 22 of the Securities Act, 15 U.S.C. § 77v, which states that “no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States.”

17. This action is not subject to a stay in favor of any prior-filed action because no prior-filed action asserts claims against the parties hereto or otherwise creates a risk of inconsistent or duplicative adjudication of the claims and allegations set forth herein.

III. SUBSTANTIVE ALLEGATIONS

A. The Fund Is a Mutual Fund That Continuously Offered Shares to Investors Pursuant to the Offering Materials

18. The Fund is a series of the Trust for Advised Portfolios (the “Trust”), a Delaware statutory trust registered with the SEC as an investment company. The Fund operates as an open-end investment company, more commonly known as a mutual fund.

19. The Fund’s securities are registered under the Securities Act, and until December 20, 2020, the Fund continuously issued shares to the public.

20. The Fund conducted its continuous public offerings pursuant to Registration Statements filed with the SEC annually. The Fund filed its initial Registration Statement on September 26, 2014, and the Registration Statements in effect during the Class Period were filed on December 31, 2018 and December 31, 2019.

21. Each of the Fund’s Registration Statements included a Prospectus and a Summary Prospectus, which provide investors information about, among other things, the Fund’s investment strategies, risks, and performance.

22. Each of the Registration Statements also incorporated by reference a Statement of Additional Information (“SAI”), which provided further information about the Fund and its operations.

23. In addition, the Fund filed Annual and Semi-Annual Shareholder Reports with the SEC every six months. The Shareholder Reports include, among other things, the Fund’s financial statements, including a listing of all securities held by the Fund and their values as of the end of the reporting period (for the Annual Reports, as of the end of August; for the Semi-Annual Reports, as of the end of February). The financial statements and accompanying notes in the Fund’s Shareholder Reports were incorporated by reference into the Registration Statements.

24. The Fund’s Registration Statements, including the incorporated Prospectuses, Summary Prospectuses, SAIs, and Shareholder Reports, are collectively referred to herein as the “Offering Materials.”

25. As required by law for mutual funds, the offering price of the Fund’s shares was the Fund’s per share NAV, which was calculated on a daily basis. The per share NAV is the value of a pro rata share of the Fund’s investment portfolio on the day of purchase.

26. As explained in the Fund’s Prospectus:

Shares of the Fund are sold at NAV per share which is calculated as of the close of regular trading (generally, 4:00 p.m., Eastern Time) on each day that the New York Stock Exchange (“NYSE”) is open for unrestricted business . . . The NAV is the value of the Fund’s securities, cash and other assets, minus all expenses and liabilities (assets – liabilities = NAV). The NAV per share is determined by dividing NAV by the number of shares outstanding (NAV/# of shares = NAV per share).

27. Accurate calculation of a fund’s NAV is critical to ensure that purchasing shareholders receive the corresponding value of their investment and that existing shareholders are not diluted. An NAV that is overstated results in investors overpaying for a fund’s shares.

B. U.S. Bank Controls and Performs Virtually All Operations Required by the Fund, Including Preparing the Registration Statements and Calculating the Daily NAV

28. Like other mutual funds, the Fund does not have any employees or facilities of its own. Its operations are conducted entirely by third-party service providers pursuant to contracts with the Fund.

29. While the Fund's investment adviser, Infinity Q, was responsible for managing the Fund's investment portfolio (*i.e.*, making decisions with respect to buying and selling securities), U.S. Bank and its personnel performed virtually all other operations required by the Fund.

30. At all relevant times, U.S. Bank served as the Fund's administrator, fund accountant, transfer agent, and custodian. U.S. Bank served in each of these roles pursuant to contracts with the Fund (or with the Trust on behalf of the Fund).

31. U.S. Bank's responsibilities with respect to the Fund included, among other things:

- a. calculating and publishing the Fund's NAV on a daily basis;
- b. identifying the securities requiring fair valuation and overseeing the process for valuing the Fund's securities holdings;
- c. reviewing and verifying fair value information provided by the Fund's investment adviser;
- d. preparing and filing the Fund's Registration Statement, Prospectus, Summary Prospectus, and SAI;
- e. preparing and filing the Fund's Annual and Semi-Annual Shareholder Reports; and
- f. preparing the Fund's financial statements, including its schedule of securities holdings.

32. U.S. Bank employees served as officers and trustees of the Fund, including: Christopher E. Kashmerick, President, Principal Executive Officer and Chairman of the Board; Russell B. Simon, Treasurer and Principal Financial Officer; Steven J. Jensen, Vice President, Chief Compliance Officer, and AML (Anti-Money Laundering) Officer; and Scott A. Resnick, Secretary.

33. Mr. Kashmerick and Mr. Simon, as U.S. Bank employees, both signed the Fund's Registration Statements and Shareholder Reports during the Class Period.

34. Mr. Kashmerick and Mr. Simon also were members of the Fund's Valuation Committee, which was responsible for day-to-day valuation matters relating to the Fund's portfolio of securities. The Valuation Committee had a third member, identified publicly as the Fund's Assistant Treasurer, who on information and belief, also was a U.S. Bank employee.

C. The Fund Holds Substantial Derivative Investments That Require Fair Valuation

35. The Fund's stated investment objective was to "generate positive absolute returns" that were "intended to have a low correlation to equity, fixed income and credit markets"—*i.e.*, a portfolio that would produce returns not tied to market conditions.

36. Infinity Q attempted to implement its investment objectives largely through the use of derivative instruments, including credit derivatives, convertible securities, futures, forwards, options and swap contracts (the "Derivative Investments").

37. Over 35% of the Fund—approximately \$547 million—was invested in various swap instruments, including "correlation," "credit default," "dispersion," "dividend," "total return" and "variance" swaps, and another 10% was invested in option contracts.

38. The Fund's Derivative Investments did not have readily obtainable market prices that could be used for purposes of the daily NAV calculation. Therefore, the Derivative

Investments had to be “fair valued,” meaning such securities were to be valued based on a good faith assessment of the amount that the Fund would receive for the securities upon a current sale.

39. A mutual fund’s investment adviser (here, Infinity Q) has potential conflicts of interest with respect to valuation of the fund’s portfolio securities. In particular, an adviser may have an incentive to overstate the value of a fund’s securities in order to increase fees, improve or smooth returns, or comply with the fund’s investment policies and restrictions.

40. Accordingly, while an investment adviser may provide input to fair value securities, SEC regulations assign ultimate responsibility to a fund’s board of trustees to oversee fair value determinations. Board oversight is intended to provide an independent and meaningful check on potential conflicts of interest and ensure the integrity of fair valuation determinations.

41. Here, the Fund’s Board delegated day-to-day responsibility for oversight of fair value determinations to U.S. Bank and its Valuation Committee, consisting exclusively of U.S. Bank employees, which was charged with independently reviewing the valuation information provided by Infinity Q.

42. As explained in the Fund’s December 31, 2019 Prospectus:¹

The Board has delegated day-to-day valuation matters to a Valuation Committee that is comprised of the Trust’s President, Treasurer and Assistant Treasurer and is overseen by the Trustees. The function of the Valuation Committee is to review each Adviser’s valuation of securities held by any series of the Trust for which current and reliable market quotations are not readily available. Such securities are valued at their respective fair values as determined in good faith by each Adviser, and the Valuation Committee gathers and reviews Fair Valuation Forms that are completed by an Adviser to support its determinations, and which are subsequently reviewed and ratified by the Board.

43. The December 31, 2019 Prospectus further stated that:

When reliable market quotations are not readily available or the Fund’s pricing service does not provide a valuation (or provides a valuation that in the judgment of the Adviser

¹ While this complaint quotes from the Fund’s December 31, 2019 Registration Statement, the December 31, 2018 Registration Statement contains materially identical disclosures.

does not represent the security's fair value) or when, in the judgment of the Adviser, events have rendered the market value unreliable, a security or other asset is valued at its fair value as determined under procedures approved by the Board. Valuing securities at fair value is intended to ensure that the Fund is accurately priced and involves reliance on judgment. Fair value determinations are made in good faith in accordance with the procedures adopted by the Board. The Board will regularly evaluate whether the Fund's fair valuation pricing procedures continue to be appropriate in light of the specific circumstances of the Fund and the quality of prices obtained through their application by the Trust's valuation committee.

44. The December 31, 2019 SAI further explained:

Generally, the Fund's investments are valued at market value or, in the absence of a market value, at fair value as determined in good faith by the Fund's Adviser with oversight by the Trust's Valuation Committee pursuant to procedures approved by or under the direction of the Board.

45. Contrary to the representations in the Offering Materials, however, the Valuation Committee did not independently review or provide oversight with respect to the valuations of Derivative Instruments held by the Fund.

46. Rather, as set forth below, U.S. Bank and the Valuation Committee completely abdicated their responsibility to oversee fair valuation determinations, and allowed Infinity Q and its portfolio manager, James Velissaris, to assign fraudulent valuations to securities, resulting in an overstatement of more than \$500 million in the value of the Fund's investment portfolio.

D. The Fund Has Admitted that the Derivative Investments Were Fraudulently Valued and Its NAV Was Overstated

47. On December 30, 2020, the Fund unexpectedly announced that it would no longer accept new investments:

Effective as of the close of business on December 31, 2020, the Infinity Q Diversified Alpha Fund (the "Infinity Q Fund") is closed to all new investment, including through dividend reinvestment, and the Infinity Q Fund's transfer agent will not accept orders for purchases of shares of the Infinity Q Fund from either current Infinity Q Fund shareholders or new investors. Current shareholders, however, may continue to redeem Infinity Q Fund shares. If all shares of the Infinity Q Fund held in an existing account are redeemed, the shareholder's account will be closed.

48. The Fund did not explain the reason for its sudden closure, nor did it indicate that there was any issue with respect to the Fund's valuation processes or the reliability of its previously calculated NAVs.

49. Approximately seven weeks later, on February 18, 2021, the SEC privately informed Infinity Q that it believed that the Fund's portfolio manager, James Velissaris, was manually adjusting certain parameters within the third-party pricing models to manipulate the fair value of certain of the Fund's swap contracts. The swap contracts at issue accounted for 18% of the Fund's \$1.8 billion in assets—*i.e.* approximately \$324 million—rendering the Fund's published NAVs inaccurate and misstated.

50. The following day, February 19, 2021, Infinity Q privately informed the Fund that it was unable to conclude that the adjustments made to the third-party pricing models by Mr. Velissaris were reasonable and that it was unable to verify that the fair values previously provided for the swap contracts were reasonable.

51. On February 22, 2021, the Fund submitted an application to the SEC, pursuant to Rule 22(e) of the 1940 Act, for permission to suspend redemptions of Fund shares, permitting the Fund to liquidate its portfolio and distribute its assets to current and former shareholders (the "22(e)(3) Application"). The 22(e)(3) Application was the first public disclosure of issues or concerns relating to valuation of the Fund's portfolio securities or its previously published NAVs.

52. The 22(e)(3) Application stated that the Fund was unable to calculate an accurate NAV following the revelation that Mr. Velissaris had manipulated the value of a large portion of the Fund's swap contracts:

[B]ased on information learned by the Commission staff and shared with Infinity Q, Infinity Q informed the Fund that Infinity Q's Chief Investment Officer had been adjusting certain parameters within the third-party pricing model that affected the valuation of the Swaps. On February 19, 2021, Infinity Q informed the Fund that at such time it was unable to conclude that these adjustments were reasonable, and, further, that it was unable to verify

that the values it had previously determined for the Swaps were reflective of fair value. Infinity Q also informed the Fund that it would not be able to calculate a fair value for any of the Swaps in sufficient time to calculate an accurate NAV for at least several days. Infinity Q and the Fund immediately began the effort to value these Swap positions accurately to enable the Fund to calculate an NAV, which effort includes the retention of an independent valuation expert. However, Infinity Q and the Fund currently believe that establishing and verifying those alternative methods may take several days or weeks. Infinity Q and the Fund are also determining whether the fair values calculated for positions other than the Swaps are reliable, and the extent of the impact on historical valuations. As a result, the Fund was unable to calculate an NAV on February 19, 2021, and it is uncertain when the Fund will be able to calculate an NAV that would enable it to satisfy requests for redemptions of Fund shares.

53. As a result, Infinity Q and the Fund, ostensibly at the direction of its Board, stated that they planned to wind down the Fund's swap positions and liquidate the Fund:

The Fund and Infinity Q believe that the best course of action for current and former shareholders of the Fund is to liquidate the Fund in a reasonable period of time, determine the extent and impact of the historical valuation errors, and return the maximum amount of proceeds to such shareholders. Relief permitting the Fund to suspend redemptions and postpone the date of payment of redemption proceeds with respect to redemption orders received but not yet paid will permit the Fund to arrive at a valuation for the Swaps and any other portfolio holdings for which current and reliable market quotations are not available, and to liquidate its holdings in an orderly manner.

54. The SEC granted the 22(e)(3) Application that same day, and the Board and Infinity Q began to wind down the Fund's holdings.

55. Following the SEC's Order, several of the counterparties to the Fund's bilateral over-the-counter ("OTC") positions issued notices of intent to terminate those positions immediately.

56. These notices created a substantial risk that the counterparties would terminate the bilateral OTC positions involuntarily and in short order, and potentially cause the Fund to owe money to the counterparties on those positions based on prices dictated by the counterparties.

57. As a result, the Fund was forced to liquidate its entire portfolio immediately.

58. On February 26, the Fund's Board retained Russell Investments Implementation Services ("RIIS") "to advise it with respect to the Fund's liquidation, to act as its designee, and to

work with Infinity Q on all Fund transactions.” “Since RIIS’s engagement, Infinity Q has been required to present all potential Fund transactions to RIIS and the Board for review and consideration.”

59. By March 9, 2021, RIIS and the Board had liquidated 93% of the Fund’s investments, resulting in enormous losses.

60. The Fund recovered only \$1.2 billion of the \$1.7 billion in net assets last reported by the Fund—*i.e., a loss of over \$500 million or nearly a third of the Fund.*

61. Infinity Q stated that the loss was “currently attributable primarily to the value realized on liquidation of the Fund’s bilateral OTC positions compared to their stated value on February 18,” which “included variance swaps, and other OTC swaps and options positions, that represented approximately 18% and 11%, respectively, of the Fund’s NAV on February 18, 2021.”

62. A subsequent investigation by an independent valuation specialist “concluded that the valuations applied to most of the Fund’s Bilateral OTC Positions were materially overstated as of February 18, 2021, and likely were overstated each trading day for several months before February 18, 2021.”

E. U.S. Bank Caused the Fund to Make False and Misleading Statements Regarding Its NAV and Valuation Procedures

63. The fraudulent fair value information provided by Infinity Q was incorporated into the Fund’s daily NAVs because U.S. Bank and the Valuation Committee, despite the representations in the Offering Materials, failed to independently verify and confirm Infinity Q’s valuation activities and the integrity of the fair value determinations, and failed to implement the oversight process described in the Registration Statements for the Fund’s Derivative Investments.

64. U.S. Bank and the Valuation Committee did not undertake to meaningfully review and oversee Infinity Q’s valuation of Derivative Investments. Rather, they merely accepted Infinity

Q's representation of the values purportedly derived from a third-party pricing model, without independently confirming those valuations against the pricing model.

65. U.S. Bank calculated and published the Fund's NAV during the Class Period. By incorporating fraudulent fair value information into the NAV calculations without first ensuring that the valuations were a good faith estimate of the price that could be obtained for the Derivative Investments in a market sale, U.S. Bank caused the Fund to materially misstate its NAV and the value of its portfolio of securities throughout the Class Period. While evaluation of the extent of the Fund's overstatement is ongoing, on information and belief, the Fund's NAV was misstated for a significant period preceding the disclosure of the Fund's valuation issues in February 2021.

66. As a result, Plaintiff and other Class members purchased shares of the Fund at inflated prices during the Class Period.

67. The inaccurate NAVs calculated by U.S. Bank also were used in connection with performance reporting that U.S. Bank prepared and published in the Fund's Prospectuses and Shareholder Reports, and thus U.S. Bank presented to investors false, inaccurate and unreliable information regarding the Fund's performance.

68. In addition, U.S. Bank incorporated the fraudulent fair valuations—again without verifying their reliability—into the disclosure of portfolio holdings that it published in the Fund's Shareholder Reports, providing investors with false, inaccurate and unreliable information regarding the value of the Fund's portfolio and the individual securities comprising it.

69. U.S. Bank also caused the Fund to misstate material facts about the process used to value the Fund's portfolio securities valuation and to calculate its daily NAV.

70. The relevant portions of the Registration Statements, drafted by U.S. Bank, stated that the Valuation Committee would "review and oversee each Adviser's valuation of securities

held by any series of the Trust for which current and reliable market quotations are not readily available,” that the “Valuation Committee gathers and reviews Fair Valuation Forms that are completed by the Advisers to support their determinations, and which are subsequently reviewed and ratified by the Board,” and that Infinity Q’s valuations were subject to “oversight by the . . . Valuation Committee.”

71. These statements were false and misleading because U.S. Bank did not implement the described process for the Fund’s Derivative Investments, despite the size of those investments and their importance to the Fund’s NAV.

72. The Registration Statements further stated to investors that the Fund’s valuation procedures would be “regularly evaluate[d] . . . in light of the specific circumstances of the Fund and the quality of prices obtained through their application by the Trust’s valuation committee.” However, U.S. Bank did not review or enhance the process for overseeing the valuation of the Derivative Instruments, even as their size and importance in the portfolio increased significantly.

73. Although the Fund’s Prospectus disclosed certain “Valuation Risk[s],” including that “[v]aluation may be more difficult in times of market turmoil,” and “may be impacted by technological issues and/or errors by pricing services or other third party service providers,” the Registration Statements failed to disclose that Infinity Q had been given complete discretion to value the Derivative Instruments without meaningful oversight—an arrangement that creates unjustified risks that were not disclosed to investors.

74. The Registration Statements likewise failed to disclose Infinity Q’s resulting conflict of interest with respect to valuation of the Fund’ portfolio holdings, and the risk that Infinity Q may, as a result, seek to influence the value of the Derivative Instruments for its own benefit.

CLASS ACTION ALLEGATIONS

75. Plaintiff brings this action as a class action under Wis. Stat. § 803.08 on behalf of a Class consisting of all persons, excluding Defendant and its officers, directors, and affiliates, who purchased or otherwise acquired Fund shares during the Class Period and were damaged thereby.

76. This action satisfies Wis. Stat. § 803.08(1)(a) because the members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Fund or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions, including being given an opportunity to exclude themselves from the Class.

77. This action satisfies Wis. Stat. § 803.08(1)(b) because common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendant violated, or caused the Fund to violate, the Securities Act;
- b. whether Defendant caused the Fund to make statements to the investing public in the Registration Statements and/or Offering Materials that misrepresented material facts or concealed material facts about the business and operations of the Fund; and
- c. the extent to which members of the Class have sustained damages and the proper measure of damages.

78. This action satisfies Wis. Stat. § 803.08(1)(c) because Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendant's wrongful conduct in violation of federal law that is complained of herein.

79. This action satisfies Wis. Stat. § 803.08(1)(d) because Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation with sufficient resources to handle an action of this nature.

80. This action satisfies Wis. Stat. § 803.08(2)(c) because questions of law or fact common to the Class members predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them, and individual prosecution would risk inconsistent and varying adjudications with respect to individual class members. There will be no difficulty in the management of this action as a class action and there are no other reasons why proceeding as a class action would be undesirable.

CAUSES OF ACTION

COUNT I

Violation of § 11 of the Securities Act

81. Plaintiff repeats and realleges all of the allegations set forth in the paragraphs above as if fully set forth herein.

82. U.S. Bank employees signed and authorized the filing of the Fund's Registration Statements, including the Shareholder Reports incorporated by reference into the Registration Statements.

83. U.S. Bank prepared the Fund's Registration Statements, including the false and misleading disclosures concerning the procedures used to fair value the Fund's portfolio holdings and the purported role of the Valuation Committee in fair valuation determinations.

84. U.S. Bank prepared the inaccurate NAVs, which were reported in the Fund's Registration Statements and in the Shareholder Reports incorporated by reference into the Registration Statements.

85. U.S. Bank prepared the disclosures of the Fund's portfolio holdings in the Fund's Shareholder Reports incorporated by reference into the Registration Statements, which misrepresented by value of the Fund's portfolio and the securities included in it.

86. The Registration Statements, including the Shareholder Reports incorporated by reference, were inaccurate and misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

87. U.S. Bank is strictly liable to plaintiff for the misstatements and omissions in the Registration Statements.

88. U.S. Bank did not make a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Registration Statements were true and without omissions of any material facts and were not misleading.

89. By reasons of the conduct herein alleged, U.S. Bank violated, and/or controlled a person who violated, § 11 of the Securities Act.

90. Plaintiff and the Class acquired shares of the Fund pursuant to the Registration Statements and have sustained damages as a result of the violation because the value of the shares of the Fund has declined substantially after disclosure of the misstatements and omissions.

91. As a result of the wrongful conduct alleged herein, Plaintiff and the Class have suffered damages in an amount to be established at trial.

92. In light of the above, U.S. Bank violated § 11 of the Securities Act and is liable to Plaintiff and the Class for the damages realized in connection with their purchases of the Fund's securities.

COUNT II

Violation of § 15 of the Securities Act

93. Plaintiff repeats and realleges all of the allegations set forth in the paragraphs above as if fully set forth herein.

94. U.S. Bank provided virtually all of the personnel, systems and infrastructure necessary for the Fund to operate, including the Fund's officers and trustees, and managed and controlled the business affairs of the Fund pursuant to contracts with the Fund (or with the Trust on behalf of the Fund).

95. U.S. Bank was responsible for and controlled the preparation of the Fund's Registration Statements, the Shareholder Reports incorporated by reference, and the other Offering Materials, including with respect to securities valuation and calculation and publication of the Fund's NAVs, which were materially false and misleading.

96. By reason of the conduct alleged herein, U.S. Bank caused the Fund to issue false and misleading Registration Statements and other Offering Materials and to publish inaccurate NAVs in violation of § 11 of the Securities Act.

97. In addition, the Fund was a seller, offeror, and/or solicitor of the Fund's shares offered pursuant to the Offering Materials. By reason of the conduct alleged herein, U.S. Bank caused the Fund to prepare and disseminate false and misleading Offering Materials, and to offer and sell shares pursuant to those Offering Materials in violation of § 12(a)(2) of the Securities Act.

98. Plaintiff and the Class did not know, nor in the exercise of reasonable diligence could have known, of the falsehoods and omissions contained therein.

99. By reason of the conduct set forth above, U.S. Bank is liable as a control person pursuant to § 15 of the Securities Act and is jointly and severally liable to Plaintiff and the Class for the damages sustained as a result of the Fund's violations of §§ 11 and 12(a)(2) of the Securities Act, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- a. Determining that this action may be maintained as a class action pursuant to Wis. Stat. § 803.08 and appointing Plaintiff as the Class representative and undersigned counsel as Lead Counsel;
- b. Determining that Defendant violated the Securities Act by reason of the acts and transactions alleged herein and requiring Defendant to pay damages sustained by Plaintiff and the Class;
- c. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- d. Awarding such other and further relief as this Court may deem just and proper.

Dated this 9th day of February, 2022.

MALLERY S.C.

Electronically Signed by K. Scott Wagner

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