UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. INFINITY Q DIVERSIFIED ALPHA FUND, *Defendant*.	22 Civ. 9608 (PKC)

[PROPOSED] ORDER TO SHOW CAUSE

Upon the Declarations of Daniel S. Noble, sworn to the 9th day of August, 2024, and upon the Memorandum of Law in Support of the Special Master's Proposed Order to Show Cause and Application for Injunctive Relief (the "Supporting Documents"), it is hereby

ORDERED that any interested party show cause before a motion term of this Court, at Courtroom 11D, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on __________________ _____, 2024, at ___________ o'clock a.m./p.m. thereof, or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to the All Writs Act, 28 U.S.C. § 1651, permanently enjoining and restraining:

i. All pending or future civil legal proceedings of any nature involving or affecting the Infinity Q Diversified Alpha Fund (the "Fund"), the Special Master, or the funds held in the Special Reserve maintained by the Special Master from proceeding against the Fund, the Special Master, the Trust for Advised Portfolios, and the following indemnitees of the Fund: all current and former Trustees and Officers of the Fund and Quasar Distributors, LLC (collectively, "Ancillary Proceedings").

ii. All courts overseeing Ancillary Proceedings from taking or permitting any action related to Ancillary Proceedings other than actions necessary to dispose of the matter(s).

ORDERED that any responsive papers are due by no later than _____________ ____, 2024, and any reply papers are due by no later than _____________ ____, 2024; and it is further

ORDERED that electronic service of a copy of this Order and the Supporting Papers upon the U.S. Securities and Exchange Commission; the Trust for Advised Portfolios; the Opt-Out Plaintiffs; and any other interested party, or those parties' counsel, on or before _________ o'clock a.m./p.m., ___________________ ____, 2024, shall be deemed good and sufficient service thereof.

DATED: New York, New York
_____________ ____, 2024

____
HON. P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. INFINITY Q DIVERSIFIED ALPHA FUND, *Defendant*.	:	22 Civ. 9608 (PKC)

MEMORANDUM OF LAW IN SUPPORT OF SPECIAL MASTER'S PROPOSED ORDER TO SHOW CAUSE AND APPLICATION FOR INJUNCTIVE RELIEF

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PRELIMINARY STATEMENT

Special Master Andrew M. Calamari, appointed pursuant to this Court's January 10, 2023 order, as amended on March 10, 2023, *see* ECF 38 (the "March Order"), respectfully submits this Memorandum of Law in Support of his Proposed Order to Show Cause and Application for Injunctive Relief permanently enjoining all current and future lawsuits against the Infinity Q Diversified Alpha Fund (the "Fund"); the Trust for Advised Portfolios ("TAP"), of which the Fund is one series; and the Fund's indemnitees (the "Indemnitees"): specifically, the Fund's current and former trustees and officers, and the Fund's distributor and underwriter, Quasar Distributors, LLC ("Quasar"). The requested injunction will have no effect on litigation brought by any shareholder against the Fund's administrator and accountant, U.S. Bancorp Fund Services, LLC ("USBFS"); its independent auditor, EisnerAmper, LLP ("EisnerAmper"); the Fund's independent investment advisor, Infinity Q Capital Management LLC ("IQCM"); or any persons or entities related to IQCM, including Bonderman Family Limited Partnership, LP, Infinity Q Management Equity LLC, James Velissaris, Scott Lindell, or Leonard Potter.

A permanent injunction is necessary to bar competing claims to the Fund's limited assets, to facilitate a final distribution of the Fund's remaining assets, and to ensure that all current shareholders are treated equitably. The Special Master respectfully requests that the Court grant expedited consideration of this Application.

The three pending lawsuits that are principally the subject of this Application were filed in New York Supreme Court by certain Fund shareholders who elected to opt out (the "Opt-Out Plaintiffs") of a separate securities class action settlement also in New York Supreme Court (the "Opt-Out Actions").[1] The class action settlement, approved by New York Supreme Court on

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[1] Specifically, the Opt-Out Actions are *The Glenmede Trust Company, NA. v. Infinity Q Capital Management LLC, et al.*, No. 160830/2022 (N.Y. Sup. Ct. Comm'l Div.); *Carson Family 2013 Dynasty*

December 21, 2023, extinguished all claims against the Fund, TAP, and the Indemnitees, except for those asserted in the Opt-Out Actions.[2] Meanwhile, this Court's March Order, to which the Opt-Out Plaintiffs did not object, stayed the Opt-Out Actions against the Fund, TAP, and the Indemnitees, except for claims against USBFS and Quasar, subject to further order of the Court. March Order ¶ 12.

Pursuant to the March Order, the Special Master is charged with (i) overseeing and managing the Special Reserve established by TAP to pay the Fund's liabilities, including legal fees and expenses incurred in various litigations by the Fund, TAP, and the Indemnitees; and (ii) avoiding dissipation of the Fund's remaining assets. March Order ¶¶ 2.B, 2.C.[3] Paragraph 12.B of the March Order expressly authorizes the Special Master to move this Court to expand the existing litigation injunction to cover Securities Act claims brought against any non-natural persons to protect the Fund and effect a final distribution to Fund shareholders. The Special Reserve is currently approximately $100 million, which the Special Master has determined cannot be distributed as long as the Fund may be subject to liability, directly or indirectly, in the Opt-Out Actions. Because the Fund has obligations to advance legal fees incurred by certain Indemnitees, and may ultimately be liable to indemnify the Indemnitees for any judgments against them,

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Trust, et al. v. Infinity Q Capital Management LLC, et al., No. 160834/2022 (N.Y. Sup. Ct. Comm'l Div.); and *Flint Hills Diversified Strategies L.P., et al. v. Infinity Q Capital Management LLC, et al.*, No. 160964/2022 (N.Y. Sup. Ct. Comm'l Div.).

[2] *See In re Infinity Q Diversified Alpha Fund Securities Litigation*, No. 651295/2021 (N.Y. Sup. Ct. Comm'l Div.), Doc. No. 438.

[3] The Special Master was appointed to finalize the distribution of the Fund's remaining assets after the Fund and its Board of Trustees made two interim distributions on a *pro rata* basis pursuant to an Order by the U.S. Securities and Exchange Commission ("SEC") under Section 22(e)(3) of the Investment Company Act (the "22(e)(3) Order") authorizing the Fund to suspend redemptions in the Fund and to liquidate the Fund and distribute its assets to its shareholders. The Fund had filed an application with the SEC for the 22(e)(3) Order after the discovery of a mismarking scheme perpetrated by IQCM and its Chief Investment Officer, James Velissaris.

continuing litigation against such Indemnitees will only drain Fund assets. Indeed, any judgment obtained by the Opt-Out Plaintiffs against any of the Indemnitees would be tantamount to a judgment against the Fund itself since the Fund, as indemnitor, would be responsible for paying the judgment. This would result in a majority of shareholders inequitably compensating a small subset of other shareholders for their losses. But the assets of the Fund are not a potential pot of "damages" for the Opt-Out Plaintiffs; they are the remaining equity of the Fund in which *all* shareholders are entitled to share *pari passu*. The Opt-Out Plaintiffs' litigations are ramping up and discovery is just beginning. At the same time, the assets of the Special Reserve are quickly being expended, with approximately $10 million in attorneys' fees and costs having already been paid out to defend claims against the Fund, TAP, and the Indemnitees. An injunction is urgently needed.

The All Writs Act, 28 U.S.C. § 1651, empowers this Court to enter all writs "necessary or appropriate" in aid of its jurisdiction. Courts in the Second Circuit have long recognized that a limited fund is a *res* subject to the Court's exclusive jurisdiction, and that the Court has power to exercise its authority under the All Writs Act to protect the fund. *See In re Baldwin-United Corp.*, 770 F.2d 328, 336 (2d Cir. 1985); *see also In re Rsrv. Fund Sec. & Derivative Litig.*, 673 F. Supp. 2d 182, 202 (S.D.N.Y. 2009). The Court should exercise its authority here to (i) permanently enjoin all litigation against Quasar relating to the Fund, including the Opt-Out Plaintiffs' claims against Quasar;[4] and (ii) make permanent the litigation stay in the March Order enjoining all other litigation against the Fund, TAP, and the other Indemnitees (*i.e.*, the Fund's trustees and officers). The requested permanent injunction would not enjoin or otherwise affect the Opt-Out Actions, or

[4] On May 29, 2024, the Opt-Out Plaintiffs agreed to temporarily stay the actions against Quasar and USBFS. On July 10, 2024, the Opt-Out Plaintiffs gave notice that the temporary stay would expire on July 17, 2024. This Application is prompted by the termination of that stay.

any other shareholder litigation, with respect to any other parties, including USBFS and EisnerAmper.

BACKGROUND

A. The Fund and its Liquidation

TAP is a Delaware statutory trust registered with the Securities and Exchange Commission (the "SEC") under the Investment Company Act of 1940. The Fund was formed as a series of TAP in September 2014 and was overseen by its trustees and officers. Ex. A, Declaration of Trust § 3.2. Quasar served as underwriter and distributor for the Fund. Ex. B, Distribution Agreement § 1. USBFS served as the Fund's administrator, accountant, and custodian. EisnerAmper served as the Fund's independent auditor.

TAP retained IQCM as an independent contractor to serve as the Fund's investment advisor. James Velissaris was IQCM's founder, majority owner, and Chief Investment Officer. The Fund's portfolio consisted primarily of cash and a variety of equity and over-the-counter derivative positions, principally swaps. The Fund's swaps were predominantly variance swaps, the value of which was tied to measures of volatility.

TAP agreed to indemnify and advance legal fees to the Fund's trustees and officers, *see* Ex. A, Amended Declaration of Trust § 6.4, and to indemnify and advance legal fees to Quasar. TAP's indemnification and advancement obligations to Quasar are set forth in the Distribution Agreement between TAP and Quasar. *See* Ex. B, Distribution Agreement § 8.A (indemnification); *id.* § 8.C (advancement).[5]

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[5] Although TAP has indemnification (but not advancement) obligations to USBFS under certain conditions, TAP has alleged that USBFS failed to exercise reasonable care in the performance of its duties and, therefore, it is not entitled to indemnification. TAP has no indemnification or advancement obligations to EisnerAmper.

In February 2021, the Fund learned that Velissaris had been altering the parameters used to value the Fund's swaps and determined it could no longer rely on valuations provided by IQCM and Velissaris. With the approval of the U.S. Securities and Exchange Commission ("SEC"), the Fund suspended redemptions and proceeded to liquidate its positions in anticipation of distributing the Fund's remaining assets to its shareholders. TAP's board of trustees retained Alvarez & Marsal, a third-party valuation firm, to conduct an independent review of IQCM and Velissaris's valuations. The Fund thus learned that IQCM and Velissaris had been fraudulently inflating the valuations of the Fund's swaps for years, beginning in or around 2017 and escalating dramatically in 2020 during the COVID-19 pandemic. Alvarez & Marsal concluded that as of June 30, 2020, more than 36% of the Fund's purported net asset value as of that date had been fabricated by IQCM and Velissaris. After exiting its positions, the Fund was left with approximately $1.25 billion in cash and cash equivalents, leaving a nearly $500 million gap between the Fund's last reported net asset value of $1.73 billion and its actual value. As a result of this shortfall, the Fund cannot repay its shareholders in full.

The Fund appointed a Special Litigation Committee ("SLC") to evaluate potential claims arising out of these events that the Fund could bring against its third-party service providers. On April 26, 2024, the Fund brought suit against USBFS and EisnerAmper. *See Trust for Advised Portfolios ex rel. Infinity Q Diversified Alpha Fund v. U.S. Bancorp Fund Services, LLC, et al.*, 652179/2024 (Sup. Ct. N.Y. Cnty. filed Apr. 26, 2024). To the extent the Fund prevails on these or any other claims, or to the extent any such claims are settled, the Fund's net recovery will be distributed to shareholders.

Between February 2021 and August 2022, a number of private securities actions were filed against the Fund in state and federal court. These lawsuits were consolidated into a federal action

and a state action and, as discussed further below, the parties worked to resolve these litigations through mediation (the "Mediated Securities Class Actions").

B. This Action and the Litigation Injunction

The SEC filed this action on November 10, 2022. ECF 1. On November 23, 2022, the SEC requested that this Court "appoint a special master and impose a litigation injunction." ECF 11 at 4. The proposed injunction was broad: with limited exceptions,[6] the SEC proposed to stay all "Ancillary Proceedings," defined as:

> [a]ll pending or future civil legal proceedings of any nature, including, but not limited to, securities litigation, derivative litigation on behalf of the Fund or on behalf of the Trust relating to the Fund (including without limitation any demands upon trustees of the Fund and/or series trustees of the Fund to take any action or commence any derivative litigation), bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, books and records demands under Delaware law or other actions of any nature involving: (a) the Special Master, in the Special Master's capacity as Special Master; (b) the Fund or any Fund Assets, wherever located; and (c) the civil actions against any and all purported Indemnitees as defined and limited by Exhibit A to this Order,[7] as may be supplemented by the Special Master and/or counsel to the Trust upon Court approval, that seeks a judgment or award that would be payable or subject to indemnification by the Fund (all such proceedings are hereinafter referred to as "Ancillary Proceedings").

ECF 12 at 12-13. In particular, the SEC sought to enjoin "all courts having any jurisdiction [over such cases] . . . from taking or permitting any action until further Order of this Court." *Id.*

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[6] The exceptions were "(i) the instant proceeding, (ii) all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, (iii) all actions pending or to be brought by the United States of America or any of its agencies, (iv) the Mediated Securities Class Actions, (v) any litigation or alternative dispute resolution proceeding pending or to be brought by the SLC in connection with Fund Litigation Claims, (vi) the derivative action styled *Rowan v. Infinity Q Capital Management, LLC, et al.*, C.A. No. 2022-0176-MTZ (Del. Ch.) (the "*Rowan* Action"), and (vii) any litigation relating to any insurance policy under which the Fund is an insured." ECF 12 at 11-12.

[7] Exhibit A to the proposed order listed "a non-exhaustive list of parties who are contractually indemnified by the Fund: Current and former trustees of the Fund, including the series trustees of the Fund[;] Current and former officers of the Fund[;] Quasar Distributors, LLC[; and] U.S. Bancorp Fund Services." ECF 12 at 22. As used herein, "Indemnitees" does not include USBFS, which, as noted above, the Fund has determined has not met the requirements for indemnification.

On January 10, 2023, this Court entered the proposed order on consent (the "January Order"). ECF 15. The January Order vested this Court with "exclusive jurisdiction over the Special Reserve and all matters arising out of, and related to, the Special Reserve," January Order ¶ 1, and appointed Andrew M. Calamari as special master. *Id.* ¶ 2. The Court granted the parties' request for a stay of all Ancillary Proceedings[8] and held that "all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court." *Id.* ¶ 15. The January Order expressly carved out from the stay the Mediated Securities Class Actions, a separate derivative case brought in Delaware (the "*Rowan* Action"), and a few others not relevant here. *See id.* ¶ 12(B).[9]

C. The Opt-Out Plaintiffs and the March Order

In August 2022, the parties to the Mediated Securities Class Actions reached a proposed settlement and moved the state court to approve the settlement. In December 2022, the Opt-Out Plaintiffs sent notices of exclusion to the class settlement administrator and filed their own actions in New York Supreme Court, alleging violations of Sections 11, 12, and 15 of the Securities Act of 1933.

Counsel for USBFS notified the Opt-Out Plaintiffs of the January Order promptly after its issuance. In February 2023, the Opt-Out Plaintiffs moved to intervene in this case to challenge the litigation injunction imposed by the January Order.[10] ECF 23, 33. The Opt-Out Plaintiffs offered four principal arguments in opposition to the injunction:

[8] As used in this memorandum of law, the term "Ancillary Proceedings" has the same definition as that used in the SEC's November 23, 2022 application. *See* ECF 11 at 4.

[9] The *Rowan* action has since been dismissed and is, therefore, no longer relevant.

[10] The Opt-Out Plaintiffs also challenged the appointment of Mr. Calamari as the Special Master. ECF 23 at 4-5; ECF 34 at 27. Pursuant to this Court's March 10, 2023 Order, the Opt-Out Plaintiffs' motion was "deemed withdrawn without prejudice." March Order ¶ 31.

- *First*, the Opt-Out Plaintiffs argued that the injunction was overbroad because it enjoined actions against USBFS, Quasar, and the trustees and officers, whose contractual indemnification rights may ultimately be deemed unenforceable. ECF 34 at 17-18. In support, the Opt-Out Plaintiffs noted the SEC's position that it is against public policy to indemnify violations of the Securities Act of 1933 and that, where the party seeking indemnification had actual knowledge of the misstatement, courts have agreed. ECF 34 at 17-18 (citing *Globus v. Law. Res. Serv., Inc.*, 418 F.2d 1276, 1288 (2d Cir. 1969)).

- *Second*, the Opt-Out Plaintiffs argued that the injunction rendered their opt-out rights "illusory with respect to the Mutual Fund, TAP, and U.S. Bank's agents." ECF 34 at 21.

- *Third*, the Opt-Out Plaintiffs argued that the injunction "effectively" removed their claims to federal court in violation of the anti-removal provision of the Securities Act of 1933. ECF 34 at 22.

- *Fourth*, the Opt-Out Plaintiffs argued that the injunction violated the Anti-Injunction Act, 28 U.S.C. § 2283.

Before the Opt-Out Plaintiffs' motion to intervene was fully briefed, however, the SEC, TAP, and the Opt-Out Plaintiffs negotiated an amendment to the litigation injunction. *See* ECF 36. On March 10, 2023, the Court entered the March Order, confirming this Court's exclusive jurisdiction over the Special Reserve while narrowing the litigation stay. ECF 38. This narrower version of the stay permitted litigation to proceed against Quasar and civil discovery to proceed against the officers and trustees. March Order ¶ 12.[11] The March Order also authorized the SEC or the Special Master to:

> move this Court on notice to the affected parties and for good cause shown to have the stay of litigation in this Order extend to the Mediated Securities Class Actions, the *Rowan* Action, and actions against non-natural persons based exclusively on

[11] In a footnote, the March Order clarified that "the Opt-Out Plaintiffs' Securities Act claims against U.S. Bancorp Fund Services, LLC, Quasar Distributors, LLC, EisnerAmper LLP, Infinity Q Capital Management LLC, James Velissaris, Leonard Potter, Scott Lindell, Bonderman Family Limited Partnership, LP, and Infinity Q Management Equity LLC are not stayed by this Order, and nothing herein prohibits the Opt-Out Actions from proceeding against those non-natural persons. Further, nothing herein prohibits the Opt-Out Plaintiffs from obtaining civil discovery in the Opt-Out Actions from the Trust, the Fund, John C. Chrystal, Albert J. DiUlio, S.J., Christopher E. Kashmerick, Harry E. Resis, Russell B. Simon or Steven J. Jensen to the extent civil discovery is authorized by applicable federal and state statutes and rules of procedure." March Order at 12 n.1.

the Securities Act, to protect the Fund and to establish the appropriate Special Reserve to effect a final distribution to the Fund's shareholders.

Id. ¶ 12(B)(i).

On May 26, 2023, the Opt-Out Plaintiffs filed an amended complaint (the "Amended Opt-Out Complaint") in New York Supreme Court asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act. *See Glenmede Trust Co. v. Infinity Q Cap. Management LLC*, No. 160830/2022, (N.Y. Sup. Ct. Comm'l Div.), Doc. No. 101.[12] The Amended Opt-Out Complaint asserts the following claims against the following defendants:

- **Section 11 claim** against James Velissaris, Leonard Potter, Scott Lindell, John C. Chrystal, Albert J. DiUlio, S.J., Christopher E. Kashmerick, Harry E. Resis, Russell B. Simon, and Steven J. Jensen (collectively, the "Individual Defendants"), TAP, IQCM, Quasar, USBFS, and EisnerAmper;

- **Section 12(a)(2) claim** against TAP, IQCM, Quasar, and USBFS; and

- **Section 15 claim** against IQCM, the Individual Defendants, USBFS, and Bonderman Family Limited Partnership, LP.

Following the New York Supreme Court's dismissal of certain of their claims[13], the Opt-Out Plaintiffs are left with the following claims against TAP, Quasar, and certain of the trustees

[12] The other two state court actions filed amended complaints containing nearly identical allegations. The Parties stipulated, and the court ordered, that the *Glenmede* action would be considered the lead Opt-Out case and that "[a]ll filings relating to the Motions to Dismiss, and all related rulings of the Court, filed and/or entered in the *Glenmede* Case shall apply equally to [*Carson* and *Flint Hills*] as though filed and/or entered therein." *Carson Family 2013 Dynasty Trust, et al. v. Infinity Q Cap. Mgmt. LLC, et al.*, No. 160834/2022 (N.Y. Sup. Ct. Comm'l Div.), Doc. No. 42; *Flint Hills Diversified Strategies L.P., et al. v. Infinity Q Cap. Mgmt. LLC, et al.*, No. 160964/2022 (N.Y. Sup. Ct. Comm'l Div.), Doc. No. 40.

[13] Specifically, the state court has dismissed the Opt-Out Plaintiffs' Section 11 claims against IQCM, USBFS, Lindell, and Potter; their Section 12 claims against IQCM and USBFS; and the Section 15 claims against IQCM, USBFS (to the extent the claim was based on control over Quasar), Bonderman Family Limited Partnership, LP, Lindell, and Potter. *See Glenmede Trust Co. v. Infinity Q Cap. Management LLC*, No. 160830/2022, (N.Y. Sup. Ct. N.Y. Cnty.) Doc. Nos. 199, 203, 205, 208, 209. Pursuant to the so-ordered stipulations, these decisions applied to the *Carson* and *Flint Hills* cases as well. The state court has not yet ruled on a motion to dismiss by Velissaris.

and officers: Chrystal, DiUlio, Resis, Kashmerick, Simon, and Jensen (the "Remaining Individual Defendants"):

- **Section 11 claims against TAP, Quasar, and the Remaining Individual Defendants.** These claims are predicated on allegations that the Trust's securities filings in December 2019, including its prospectus, contained false statements of material fact and/or omitted material facts that were required to be disclosed or necessary to make the statements therein not misleading. *See* Amended Opt-Out Complaint ¶ 270. These Section 11 claims are governed by different standards: As an issuer or as signatories of the filings, TAP and the Remaining Individual Defendants other than Jensen are subject to a strict-liability standard, while Quasar, as the underwriter, and Jensen, as a non-signatory officer, may only be held liable if the Opt-Out Plaintiffs establish their negligence. *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 120 (2d Cir. 2012); *In re Fuwei Films Sec. Litig.*, 634 F. Supp. 2d 419, 435 n.10 (S.D.N.Y. 2009);

- **Section 12 claims against TAP and Quasar based on their offers to sell, solicitations to sell, and/or sales of shares of the Fund by means of the Trust's securities filings in December 2019.** *See* Amended Opt-Out Complaint ¶ 285. These claims are governed by the negligence standard as the Amended Opt-Out Complaint does not allege fraud. Amended Opt-Out Complaint ¶ 284; *In re Fuwei Films Sec. Litig.*, 634 F. Supp. 2d 419, 435 n.10 (S.D.N.Y. 2009); and

- **Section 15 claims against the Remaining Individual Defendants based on their alleged status as control persons of the Fund, TAP, USBFS, or Quasar by virtue of their management positions with USBFS and/or TAP.** *See* Amended Opt-Out Complaint ¶ 296. Section 15 claims do not require a finding of scienter. *See In re Lehman Bros. Mortg.-Backed Sec. Litig.*, 650 F.3d 167, 185 (2d Cir. 2011) ("[T]o establish § 15 liability, a plaintiff must show a 'primary violation' of § 11 [or § 12(a)(2)] and control of the primary violator by defendants.").

D. The Stipulated Stay and its Termination

On May 29, 2024, this Court so-ordered a stipulation between the Special Master, the SEC, the Fund, Quasar, USBFS, and the Opt-Out Plaintiffs temporarily staying the Opt-Out Plaintiffs' litigation (the "Stipulation"). ECF 97. Pursuant to the Stipulation, "The Opt-Out Actions against USBFS and Quasar [were] stayed until 7 days after written notice filed by the Opt-Out Plaintiffs with this Court, which notice shall not be given before July 9, 2024, or upon further order of this Court." *Id.* ¶ 1.

On July 10, 2024, the Opt-Out Plaintiffs filed a notice terminating the stay against USBFS and Quasar. ECF 103. Pursuant to the Stipulation, the stay lifted on July 17, 2024. The March Order, which stays all claims against the Fund, TAP, and the other Indemnitees, remains in effect.

E. The Fund's Special Reserve

As of June 30, 2024, the balance of the Special Reserve was $99,180,238. *See* Special Master's Fifth Quarterly Report, ECF 104 at 1. This sum includes Fund assets that the Special Master set aside, with this Court's approval, to pay legal costs of the Fund and the Indemnitees in pending litigations before distributing the remainder to the Fund's shareholders. As of July 2024, the Fund has paid approximately $9,857,830.66 in total for attorneys' fees and costs for the Fund, TAP, and the Indemnitees, of which $7,796,796.47 was for expenses associated with claims against the Fund and/or TAP and $2,061,034.19 was for expenses associated with claims against the Indemnitees.[14] At present, the Opt-Out Plaintiffs' litigations are ramping up and discovery is beginning in earnest. As a result, the associated litigation costs are expected to increase significantly in the near future.

DISCUSSION

The March Order authorizes the Special Master to "move this Court on notice to the affected parties and for good cause shown to have the stay of litigation in this Order extend to . . . actions against non-natural persons based exclusively on the Securities Act[] to protect the Fund and to establish the appropriate Special Reserve to effect a final distribution to the Fund's shareholders." March Order ¶ 12(B)(i). For the reasons set forth below, all claims against the

[14] An additional $7,164,472.98 in claimed attorneys' fees and costs has been sought as advancement. Of this sum, $4,400,000.00 has been the subject of claims filed with the Fund's insurer; and payment of legal fees and costs in the amount of $2,708,797.48 has been deferred because certain of the Indemnitees have not qualified for advancement.

Fund, TAP, and the Indemnitees should now be permanently enjoined for "good cause" under the March Order and pursuant to the All Writs Act.

I. THIS COURT SHOULD PERMANENTLY ENJOIN ALL CLAIMS AGAINST THE FUND, TAP, AND THE INDEMNITEES

As contemplated in the March Order, this Court should exercise its authority under the All Writs Act to permanently enjoin the Opt-Out Plaintiffs' action and all other claims against the Fund, TAP, and the Indemnitees in order to preserve its exclusive jurisdiction over the Special Reserve and to prevent the Special Reserve from being further depleted by the Fund's advancement and indemnification obligations. Further, permanent injunctive relief is the only way to ensure a prompt and equitable *pro rata* distribution of assets to all the Fund's shareholders.

A. This Court Has Broad Authority Under the All Writs Act to Issue an Injunction to Protect its Jurisdiction and to Effectuate a Plan of Distribution

Ordinarily, a federal court is barred from enjoining a state court action by the Anti-Injunction Act, which provides that federal courts may not enjoin actions in state court unless the injunction falls within one of three enumerated categories, including, "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. But where, as here, "a court's injunction [is] in fact necessary in aid of its jurisdiction . . . the injunction [is] authorized by the All Writs Act, and [is] not barred by the Anti-Injunction Act." *Rsrv. Fund*, 673 F. Supp. 2d at 204 (citation and internal quotation marks omitted). District courts enjoy broad discretion to issue injunctions in aid of their jurisdiction, and such injunctions are reviewed deferentially only for abuse of discretion. *See United States v. Schurkman*, 728 F.3d 129, 135 (2d Cir. 2013).

The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," 28 U.S.C. § 1651(a), including a litigation injunction to maintain their exclusive jurisdiction over a limited *res*, even where such an injunction may impair the claims of non-parties. *See Rsrv. Fund*, 673 F.

Supp. 2d at 202 ("The Second Circuit has noted that an All Writs Act injunction is appropriate in cases where 'federal courts have jurisdiction over a res in an in rem action,' because the exercise of jurisdiction over the same res by state courts would necessarily impair the jurisdiction of the federal court." (quoting *In re Baldwin-United Corp.*, 770 F.2d 328, 336 (2d Cir. 1985)); *see also Stott v. Cap. Fin. Servs., Inc.*, 277 F.R.D. 316, 337 (N.D. Tex. 2011) ("In approving a 'limited fund' settlement, courts are frequently forced to enjoin competing litigation in order to preserve the 'limited fund' utilizing their authority under the All Writs Act.").

Injunctions under the All Writs Act are not subject to the traditional four-part showing required by Rule 65 of the Federal Rules of Civil Procedure. *See Baldwin-United*, 770 F.2d at 339 ("Rule 65 does not apply to injunctions issued under the All Writs Act against non-parties whose actions would impair the court's jurisdiction."); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2014 WL 4966072, at *32 (E.D.N.Y. Oct. 3, 2014) ("[A] court's authority to issue an injunction under the [All Writs] Act is not limited by Rule 65."). Rather, under the All Writs Act, a more lenient standard applies: the injunction need only "be specific and definite enough to apprise those within its scope of the conduct that is being proscribed" and "those subject to the injunction [must] receive appropriate notice of its terms." *Baldwin-United*, 770 F.2d at 339.

B. Permanent Injunctive Relief is Necessary to Protect this Court's Jurisdiction Over the Special Reserve and to Prevent the Dissipation of Fund Assets

Where, as here, a federal court is tasked with preserving the assets of a limited *res* for distribution, the issuance of an injunction under the All Writs Act addresses two intertwined concerns: (i) protecting the exclusive jurisdiction of the federal court to ensure that it has unimpeded authority to effect a final plan of distribution; and (ii) preserving the corpus of the *res* from dissipation by preventing courts in ancillary state proceedings from issuing competing orders directing the distribution of the limited assets of the *res*. Both interests are implicated here.

First, as this Court and the Second Circuit have clearly held, an All Writs Act injunction is appropriate in cases involving the distribution of a limited *res* because the exercise of jurisdiction over the same *res* by state courts would necessarily impair the jurisdiction of the federal court. *See Baldwin-United*, 770 F.2d at 336 (noting that where "federal courts have jurisdiction over a *res* in an *in rem* action . . . the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached" (internal quotation marks omitted)); *Rsrv. Fund*, 673 F. Supp. 2d at 204 ("The distribution plan that this Court has determined is necessary for the fair and equitable treatment of all claimants simply cannot succeed if suits brought in state court are allowed to proceed, depleting the *res* and interfering with the equitable principles underlying the *pro rata* distribution.").

Here, there is no question that the Special Reserve is a limited *res*: the liquidation of the Fund resulted in a shortfall of approximately half a billion dollars, and even under the Special Master's most optimistic predictions, the anticipated recovery on the Fund's claims against EisnerAmper, USBFS, and others is unlikely to close the gap. Nor is there any dispute that this Court enjoys exclusive jurisdiction over the Special Reserve and "all matters arising out of, and related to, the Special Reserve." March Order ¶ 1. This Court's orders contemplate a distribution process for the Special Reserve to be proposed and managed by the Special Master, subject to this Court's approval and oversight. *See* March Order ¶ 2(B). But without the requested permanent injunction, the orderly distribution of the Special Reserve could be undermined by competing or inconsistent orders issued by courts in Ancillary Proceedings.

Second, immediate and permanent injunctive relief is needed here to prevent further dissipation of the Special Reserve. To date, the Special Master has distributed all but the roughly $100 million remaining Special Reserve to the shareholders on a *pro rata* basis, with the remaining

amount set aside principally to cover the legal costs and potential judgments against the Fund and its Indemnitees, particularly in the Opt-Out Plaintiffs' action, and to pursue claims on behalf of the Fund. Other than interest income earned by the Special Reserve, the Fund does not have assets beyond the Special Reserve, and any claim allowed to proceed against the Fund, TAP, or the Indemnitees would deplete the Special Reserve, diminishing shareholder recovery.

Without a permanent injunction, the state court actions will require the Fund to draw against the Special Reserve to pay its own legal fees and those of TAP; to advance legal fees and potentially to indemnify Quasar; and to indemnify the trustees and officers. The Fund's advancement obligation to Quasar is broader than its indemnification obligation; advancement must be paid immediately upon demand to *potential* indemnitees, regardless of the ultimate merits of the plaintiff's claims or the indemnitee's defenses. *See In re Platinum-Beechwood Litig.*, 378 F. Supp. 3d 318, 330 (S.D.N.Y. 2019) ("advancement 'is a right whereby a *potential* indemnitee has the ability to force the [indemnitor] to pay his litigation expenses as they are incurred regardless of whether he will ultimately be entitled to indemnification.'" (emphasis and alterations in original) (citations omitted)). In short, without permanent injunctive relief barring the Opt-Out Plaintiffs from proceeding against the Fund, TAP, and the Indemnitees, the assets of the Special Reserve will be depleted by the substantial anticipated attorneys' fees and costs instead of being returned to the defrauded shareholders.

In *Reserve Fund*, Judge Gardephe found that potential interference with the federal court's distribution plan and possible depletion of assets from the limited *res* available justified the issuance of an All Writs Act injunction, explaining:

> A state court adjudicating claims against the . . . Fund, or claims against the Defendants for indemnifiable conduct for which the . . . Fund would be liable, would be exercising jurisdiction over that same res. A state court could grant relief to an individual claimant and siphon assets away from the res without regard to any

> equitable concerns, thereby undermining the implementation of the pro rata distribution this Court has deemed necessary to treat all claimants fairly and equitably. As the Second Circuit outlined in *Baldwin-United*, this kind of inherent conflict justifies the issuance of an All Writs Act injunction.

673 F. Supp. 2d at 203. Those same concerns are present here. Enjoining other claims against the Fund, TAP, and the Indemnitees is thus "appropriate or necessary" equitable relief that this Court is authorized to grant under the All Writs Act in aid of this Court's jurisdiction over the Special Reserve. 28 U.S.C. § 1651(a); *Rsrv. Fund*, 673 F. Supp. 2d at 202.

C. Injunctive Relief is Necessary to Ensure that Similarly Situated Shareholders are Treated Equitably

Subject to the Court's approval, the Special Master contemplates a final distribution that will settle all approved expenses and distribute—like previous court-approved distributions—all remaining funds to all of the Fund's shareholders on a *pro rata* basis, thus treating all shareholders alike. The Special Master respectfully submits that a *pro rata* distribution is consistent with controlling case law, prior distributions in this case, and is the most equitable approach. A fair *pro rata* distribution, however, cannot be achieved without the requested permanent injunction.

Where, as here, "investors' assets are commingled and the recoverable assets . . . are insufficient to repay the investors, equality is equity." *SEC v. McGinn, Smith & Co.*, 2016 WL 6459795, at *3 (N.D.N.Y. Oct. 31, 2016) (quoting *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 327 (7th Cir. 2010)) (internal quotations omitted). "In particular, pro rata distributions are proper 'where the funds of the defrauded victims [ar]e commingled and where victims [ar]e similarly situated with respect to their relationship to the defrauders.'" *McGinn, Smith & Co.*, 2016 WL 6459795, at *3 (quoting *S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir. 2002)) (alterations in original). And *pro rata* distribution is particularly appropriate for the remaining assets of a mutual fund: by law, mutual fund shares are "redeemable securities" entitling holders to their "proportionate share of the issuer's current net assets, or the cash equivalent thereof." 15

U.S.C. § 80a-2(a)(32). To achieve this, a mutual fund must calculate its net asset value on a daily basis and must redeem all shares on a given day at the same price per share. *See* 17 C.F.R. § 270.22c-1(a) ("No registered investment company issuing any redeemable security . . . shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security . . . .").

These principles apply here because shareholders' funds were comingled and the assets of the Special Reserve are insufficient to repay these shareholders. All of the shareholders are similarly situated with respect to their relationship to "the defrauder," Velissaris: none were aware that Velissaris was engaging in the fraudulent inflation of the Fund's net asset value. As such, the Fund's shareholders are each equally entitled to an equitable recovery proportional to the amount of their investment. Here, as in *McGinn*, "equality is equity." 2016 WL 6459795, at *3.

But a *pro rata* distribution of the Special Reserve cannot be achieved without a permanent injunction. Any judgment obtained in litigation against the Indemnitees is tantamount to a judgment against the Fund itself because the Fund, as indemnitor, is the obligor of any such the judgment. Such a judgment would cannibalize the Special Reserve, transforming the remaining assets of the Fund to which all shareholders have an equally valid claim into a pot of damages for the Opt-Out Plaintiffs alone, and frustrating a *pro rata* distribution of the remaining assets of the Fund. If, on the other hand, the Opt-Out Plaintiffs were to proceed with their claims and lose, all shareholders would share *pro rata* in the costs to the Fund associated with that loss. Neither outcome is equitable.

To avoid these inevitably inequitable results, the Special Master respectfully requests that the Court permanently enjoin all current and future claims, including the Opt-Out Plaintiffs' claims, against the Fund, TAP, and the Indemnitees.

II. THE OPT-OUT PLAINTIFFS' OBJECTIONS ARE WITHOUT MERIT

In support of their prior motion to intervene in this action, the Opt-Out Plaintiffs raised four challenges to this Court's authority to stay their state-court claims: (i) the Indemnitees' contractual right to indemnification may ultimately be deemed unenforceable on public policy grounds; (ii) a stay enjoining litigation of their claims in state court would render their due process right to opt out of class settlement "illusory"; (iii) an injunction would impermissibly "remove" their state court securities action to federal court; and (iv) a stay enjoining litigation of their claims in state court would violate the Anti-Injunction Act. ECF 23, 34. These arguments have no merit.

A. Allowing Claims Against the Indemnitees to Advance Will Deplete the Special Reserve and Delay Distribution of the Special Reserve

The Opt-Out Plaintiffs first argue that the Indemnitees' contractual right to indemnification may ultimately be deemed unenforceable on public policy grounds. ECF 34 at 18-19. This argument fails for multiple reasons.

As a threshold matter, the Opt-Out Plaintiffs fail to acknowledge the Fund's advancement obligation to Quasar, which will *immediately* deplete the Special Reserve, regardless of whether the indemnification provision of the Distribution Agreement is ultimately deemed unenforceable. *See In re Platinum-Beechwood Litig.*, 378 F. Supp. 3d at 330 (advancement "is a right whereby a *potential* indemnitee has the ability to force the [indemnitor] to pay his litigation expenses *as they are incurred regardless of whether he will ultimately be entitled to indemnification*." (emphasis added) (internal quotation marks omitted)).

Even setting aside the Fund's *advancement* obligations to Quasar, the Opt-Out Plaintiffs' assertion that the Fund may ultimately be relieved of its *indemnification* obligations is not supported by the law or the facts. As a general matter, it is well settled that corporate entities may indemnify directors and officers for ordinary negligence or strict liability. *See Wisener v. Air Exp.*

Int'l Corp., 583 F.2d 579, 581 (2d Cir. 1978) ("There is little doubt that a corporation may commit itself to indemnify its officers and directors for litigation expenses incurred in defending against liability for actions taken in carrying out corporate responsibilities, even though negligent, if the corporation finds it in the corporate interest to undertake such a commitment."). And the Investment Company Act of 1940, which governs the Fund, prohibits indemnifying directors, officers, and underwriters only for acts of "willful misfeasance, bad faith, gross negligence or reckless disregard . . . ." 15 U.S.C. § 80a-17(h), (i).

Here, none of the Opt-Out Plaintiffs' three surviving causes of action will require a finding of anything more than mere negligence. Specifically:

- The Section 11 claims are governed by the strict-liability standard for the signatory-defendants (TAP and the Remaining Individual Defendants other than Jensen) and the ordinary negligence standard for the non-signatory defendants (Quasar and Jensen);
- The Section 12 claims against TAP and Quasar are governed by the ordinary negligence standard; and
- The Section 15 claims do not require a finding of scienter. *See In re Lehman Bros. Mortg.-Backed Sec. Litig.*, 650 F.3d 167, 185 (2d Cir. 2011) ("[T]o establish § 15 liability, a plaintiff must show a 'primary violation' of § 11 [or § 12(a)(2)] and control of the primary violator by defendants.").

Moreover, it is unlikely the Opt-Out Plaintiffs could adduce sufficient facts to demonstrate scienter on the part of Quasar given that their complaint simply lumps Quasar in with several other entities and makes only generalized, broad-brush allegations about them collectively. And as the Opt-Out Plaintiffs' own authority demonstrates, should the Indemnitees prevail, or at least demonstrate that they are not at fault, there would "be no basis in statute or case law to support an argument that [their] indemnification agreements are unenforceable." *Credit Suisse First Bos., LLC v. Intershop Commc'ns AG*, 407 F. Supp. 2d 541, 549 (S.D.N.Y. 2006).

The Opt-Out Plaintiffs' contrary arguments have no merit. Regulation S-K—which requires issuers to include a statement in the prospectus that, in the SEC's view, provisions indemnifying *directors and officers*[15] for violations of the Securities Act of 1933 should be deemed unenforceable on public policy grounds—does not displace the indemnification provisions of the Investment Company Act, which permit indemnification in the absence of "willful misfeasance, bad faith, gross negligence or reckless disregard . . . ." 15 U.S.C. § 80a-17(h), (i). And *Globus v. Law Research Service, Inc.*, 418 F.2d 1276, 1288 (2d Cir. 1969), on which the Opt-Out Plaintiffs rely, is inapposite. There, the party seeking indemnification had *actual knowledge* of the misconduct alleged. In affirming the district court's invalidation of the indemnification provision at issue, the Court expressly limited its holding to "the case where the underwriter has committed a sin graver than ordinary negligence." *Id.* Thus, to the extent the SEC's statement of policy in 17 C.F.R. § 229.510 would invalidate indemnification provisions that cover negligent or innocent conduct under the Securities Act, it is inconsistent with the Investment Company Act and goes much further than the Second Circuit's holding in *Globus*.

In any event, even in the speculative circumstances posited by the Opt-Out Plaintiffs, shareholder recovery will be delayed—likely for several years—until the Opt-Out Plaintiffs' claims are finally adjudicated and the indemnification issue is litigated. Until such potential claims against the Special Reserve are determined, no distributions can be made to the Fund's shareholders. Thus, allowing the Opt-Out Plaintiffs' claims to proceed against the Indemnitees will have a direct and immediate impact on this Court's jurisdiction and on the prompt and ratable liquidation of the Special Reserve.

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[15] There is no comparable provision for underwriters. *Compare* 17 C.F.R. § 229.510 *with* 17 C.F.R. § 229.508(g).

B. Permanent Injunctive Relief Does Not Violate the Opt-Out Plaintiffs' Due Process Rights

The Opt-Out Plaintiffs argue that a stay enjoining litigation of their claims in state court would render their opt-out rights illusory, in violation of their due process right to "pursue claims outside of the class" against Mutual Fund, TAP, and "U.S. Bank's agents" (presumably meaning Quasar). ECF 34 at 21. Not so.

As a practical matter, the proposed injunction will not prevent the Opt-Out Plaintiffs from pursuing litigation against any third-party provider to the Fund that is not an Indemnitee. Unlike the settling shareholders, the Opt-Out Plaintiffs can still pursue claims against USBFS and EisnerAmper for damages under the requested injunction because neither the legal fees incurred by those defendants nor the issuance of any judgment against them would impinge upon this Court's jurisdiction by draining the Special Reserve.

More fundamentally, the due process problem about which the Opt-Out Plaintiffs complain simply does not exist. As the Opt-Out Plaintiffs correctly note, "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class" by opting out. *Phillips Petro. Co. v. Shutts*, 472 U.S. 797, 812 (1985). While the due process clause protects a plaintiff's *right* to prosecute its claims on its own behalf, it does not guarantee that the plaintiff will be *able* to do so as a practical matter. To take an example from the bankruptcy context, a plaintiff who is stymied in his efforts to pursue a cause of action by the bankruptcy of a defendant and the imposition of the automatic bankruptcy stay has not suffered a due process violation. *Fidelity Mort. Inv. v. Camelia Builders, Inc.*, 550 F.2d 47, 55 (2d Cir. 1976) (construing former Bankruptcy Act). Rather, "[d]ue process is satisfied because creditors have an opportunity to obtain relief from the automatic stay in the bankruptcy court." *Petition of Singer*, 205 B.R. 355, 357 (S.D.N.Y. 1997) (discussing *Fidelity Mortgage Investors*). Policy considerations played an

important role in the Second Circuit's determination that the imposition of the automatic bankruptcy stay does not result in a due process violation for creditors. *Fidelity Mortgage* held that the automatic stay:

> is designed to prevent a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts. The stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another.

Fidelity Mort. Inv., 550 F.2d at 55.

The principles apply here. There is no dispute that the Opt-Out Plaintiffs were afforded—and exercised—their due process right to opt out of having their claims extinguished by the settlement of the class action. Nor is there any dispute that the Opt-Out Plaintiffs received notice of the instant Application or that they will be afforded an opportunity to be heard before the requested injunction is imposed. That is all that due process requires. *See id.* (holding that the automatic bankruptcy stay does not violate due process because it provides for a prompt hearing at which creditors may seek relief from the stay). And the important policy goals of preventing the dissipation of assets and facilitating an orderly and *pro rata* distribution are equally salient here.

To be sure, "[a]n equitable plan is not necessarily a plan that everyone will like." *Rsrv. Fund*, 673 F. Supp. 2d at 195 (quoting *SEC v. Byers*, 637 F. Supp. 2d 166, 168 (S.D.N.Y.2009)). Indeed, "when funds are limited, hard choices must be made." *Rsrv. Fund*, 673 F. Supp. 2d 182 at 195 (quoting *Off. Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)). Courts in this Circuit routinely make the choice to issue injunctions under the All Writs Act to protect their jurisdiction and to effectuate an orderly and ratable liquidation of a limited fund. In this case, the Court's Orders provide that the hard choices are to be made by the Special Master, subject to the approval and oversight of this Court. At bottom, the Opt-Out Plaintiffs' due process argument is an attempt to wrest control of the Special Reserve from the

Court and the Special Master. But this argument is wrong on the law and on the equities. The proposed injunction does not violate due process.

C. The Proposed Injunction Would Not "Effectively Remove" the Opt-Out Plaintiffs' Claims to Federal Court

The Opt-Out Plaintiffs next argue that a stay enjoining litigation of their claims in state court would effectively and impermissibly remove their claims to federal court. ECF 34 at 22. Because they asserted claims under the Securities Act of 1933 in state court, the Opt-Out Plaintiffs argue, and because cases brought in state court under the 1933 Act may not be removed to federal court pursuant to 15 U.S.C. § 77v(a), this Court may not do anything to impede the Opt-Out Plaintiffs' state court actions. This argument misses the mark.

The requested injunctive relief would not remove the Opt-Out Plaintiffs' state-court claims to federal court or otherwise adjudicate those claims in a federal forum. Rather, the proposed injunction would enjoin their state-court claims as against the Fund, TAP, and the Indemnitees in order to protect this Court's jurisdiction and the Special Reserve. Nevertheless, the Opt-Out Plaintiffs will remain free to continue litigating their claims against USBFS and EisnerAmper and all of the other defendants they have named *in state court*. As such, the Opt-Out Plaintiffs have no cause for concern that their claims will be removed and adjudicated in federal court.

D. The Anti-Injunction Act is Inapplicable Here

Lastly, the Opt-Out Plaintiffs argue that the Anti-Injunction Act, 28 U.S.C. § 2283, precludes this Court from enjoining the state court actions. ECF 34 at 22. It does not, and this argument has been rejected where, as here, the dispute concerns a limited amount of funds subject to the jurisdiction of the federal court. When "a court's injunction [is] in fact necessary in aid of its jurisdiction . . . the injunction [is] authorized by the All Writs Act, and [is] not barred by the Anti-Injunction Act." *Rsrv. Fund*, 673 F. Supp. 2d at 204 (citation and internal quotation marks

omitted). Here, the requested injunctive relief is in aid of this Court's exclusive jurisdiction over the Special Reserve, will prevent the depletion of the Special Reserve—a limited *res*—and is necessary for the implementation of a prompt, *pro rata* distribution. *See supra*, Section I.A.

The Opt-Out Plaintiffs attempt to argue otherwise by asserting that "the Anti-Injunction Act does not permit a federal court to protect its jurisdiction by enjoining a state-court *in personam* action and noting that the state court actions are *in personam* proceedings, and not *in rem* proceedings. ECF 34 at 24. However, where the *federal* action concerns the disposition of a limited *res*—regardless of whether it was "brought *in rem*"—Courts in this Circuit routinely enjoin state court *in personam* actions to avoid depleting the assets of the *res*. *See In re Baldwin-United Corp.*, 770 F.2d at 336 (enjoining state court actions where federal court exercised jurisdiction over a *res* in an *in rem* action; "in such a case, because the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached, the federal court is empowered to enjoin any state court proceeding affecting that *res*" (internal quotation marks omitted)); *Rsrv. Fund*, 673 F. Supp. 2d at 204 (granting All Writs Act Injunction in aid of jurisdiction where federal court was "dealing with a limited res that [was] likely to be dissipated" by claims against the fund or that would implicate fund's indemnification obligations in the absence of an injunction).

The Opt-Out Plaintiffs fare no better with the argument that their *in personam* claims do not "seek a judgment against, or to interfere with, the Special Reserve." ECF 34 at 25. Regardless of what the Opt-Out Plaintiffs *seek* to do, the inevitable consequences of allowing their state court actions to proceed would be the depletion of the Special Reserve, interference with this Court's exclusive jurisdiction over the Special Reserve, and the frustration of an equitable distribution. *See supra*, Section I.

Finally, the Opt-Out Plaintiffs claim that the *Glenmede* action should have priority over this one, as *Glenmede* was filed a few weeks prior to the issuance of this Court's January Order. *Id.* In support, the Opt-Out Plaintiffs rely on *Kline v. Burke Const. Co.*, 260 U.S. 226, 229 (1922), which explained that where the *in rem* jurisdiction "of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the state court's jurisdiction." But the state court in the Opt-Out Actions has no *res* before it, ECF 34 at 24, and priority is a non-issue here.

CONCLUSION

For the foregoing reasons, the Special Master respectfully requests that the Court issue the Proposed Order to Show Cause and grant the Application for Injunctive Relief permanently enjoining all actions against the Fund, TAP, and the Indemnitees.

Dated: New York, New York
August 9, 2024

Respectfully submitted,

/s/ Daniel S. Noble

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. INFINITY Q DIVERSIFIED ALPHA FUND, *Defendant*.	22 Civ. 9608 (PKC)

DECLARATION OF DANIEL S. NOBLE IN SUPPORT OF SPECIAL MASTER'S PROPOSED ORDER TO SHOW CAUSE AND APPLICATION FOR INJUNCTIVE RELIEF

I, Daniel S. Noble, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years of age and am counsel to Special Master Andrew M. Calamari in this action. I submit this Declaration pursuant to Local Civil Rule 6.1 and in support of the Special Master's Proposed Order to Show Cause and Application for Injunctive Relief.

2. As set forth in the Special Master's Memorandum of Law in Support of his Proposed Order to Show Cause and Application for Injunctive Relief ("Memorandum"), the Special Master seeks permanent injunctive relief enjoining claims against Defendant Infinity Q Diversified Alpha Fund (the "Fund"); the Trust for Advised Portfolios ("TAP"), of which the Fund is one series; and certain parties to whom the Fund owes advancement and/or indemnification obligations, specifically the Fund's current and former Trustees and Officers and the Fund's distributor and underwriter, Quasar Distributors, LLC (the "Indemnitees"). The Special Master seeks this relief because it is necessary to (i) protect the Court's exclusive jurisdiction over the limited *res* of the Fund's remaining assets; (ii) prevent the dissipation of the

Fund's remaining assets due to the Fund's advancement and indemnification obligations; and (iii) achieve a *pro rata* distribution of the Fund's remaining assets to defrauded shareholders that is fair and equitable to all shareholders.

3. There are claims brought by certain Fund shareholders against the Fund, TAP, and the Indemnitees who opted out the Mediated Securities Class Action settlement (the "Opt-Out Plaintiffs") that are pending in New York Supreme Court. The Opt-Out Plaintiffs' actions raise competing claims to the Fund's assets and will result in legal fees and potential judgments that will have to be paid from those same assets. The Opt-Out Plaintiffs' claims and any other current and future claims against the Fund, TAP, and the Indemnitees should be permanently enjoined for the reasons outlined above and in the Special Master's Memorandum.

4. Because of the risks to this Court's exclusive jurisdiction over the Fund's assets, the certain diminution of those assets in the event the Opt-Out Plaintiffs' claims are allowed to proceed, and the need for uniformity to achieve an equitable *pro rata* distribution to all defrauded shareholders, the Special Master is proceeding by Order to Show Cause rather than by Notice of Motion so that a Scheduling Order may be immediately entered and the process by which the Court and all interested parties can consider the requested relief and lodge any objections may commence as soon as possible.

5. No prior request for the relief sought in the Special Master's Application has been made.

6. The Special Master provided notice of this Application to the U.S. Securities and Exchange Commission, TAP, and the Opt-Out Plaintiffs on August 9, 2024 by providing their respective counsel with a copy of the Proposed Order to Show Cause and Application for

Injunctive Relief, the Special Master's Memorandum, and my Declarations and Exhibits thereto in support.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
August 9, 2024

Daniel S. Noble
Counsel to Special Master

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

INFINITY Q DIVERSIFIED ALPHA FUND,

Defendant.

22 Civ. 9608 (PKC)

DECLARATION OF DANIEL S. NOBLE IN SUPPORT OF SPECIAL MASTER'S PROPOSED ORDER TO SHOW CAUSE AND APPLICATION FOR INJUNCTIVE RELIEF

I, Daniel S. Noble, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years of age and am counsel to Special Master Andrew M. Calamari in this action. I submit this Declaration in support of the Special Master's Proposed Order to Show Cause and Application for Injunctive Relief.

2. I submit this Declaration based upon my personal knowledge, information, and belief. This Declaration is based on my review of the documents received by the Special Master in connection with his appointment in the above-captioned action.

3. Attached hereto as Exhibit A is a true and correct copy of the Amended and Restated Agreement and Declaration of Trust of Trust for Advised Portfolios.

4. Attached hereto as Exhibit B is a true and correct copy of the Distribution Agreement entered into as of September 11, 2014 by and between Trust for Advised Portfolios and Quasar Distributors, LLC.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 9, 2024
New York, New York

Daniel S. Noble
Counsel to Special Master

EXHIBIT A

AMENDED AND RESTATED

AGREEMENT AND DECLARATION OF TRUST

of

TRUST FOR ADVISED PORTFOLIOS

a Delaware Statutory Trust

Adopted: August 26, 2003
Amended and Restated: June 1, 2005;
August 19, 2015; February 27, 2019;
August 14, 2020; and December 20, 2021

TRUST FOR ADVISED PORTFOLIOS

AGREEMENT AND DECLARATION OF TRUST

(As Amended and Restated Effective December 20, 2021)

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST made by the undersigned Trustees as of the 20th day of December 2021.

WHEREAS, Trust for Advised Portfolios (the "Trust") was formed to carry on the business of an investment company; and

WHEREAS, the Trust is authorized to issue its shares of beneficial interest ("Shares") in separate series, each separate series to be a Portfolio hereunder, and to issue Classes of Shares of any Portfolio or divide Shares of any Portfolio into two or more Classes, all in accordance with the provisions hereinafter set forth;

WHEREAS, the Trustees have agreed to manage all property coming into their hands as trustees of a Delaware statutory trust in accordance with the provisions hereinafter set forth;

WHEREAS, the Trustees have amended and restated this Declaration of Trust in its entirety as of June 1, 2005, August 19, 2015, February 27, 2019, and August 14, 2020; and

WHEREAS, pursuant to Section 7.3 hereof, the Trustees, by written resolution of all of the Trustees on December 20, 2021, have further amended this Declaration of Trust by amending and restating it in its entirety;

NOW, THEREFORE, the Trustees hereby declare that they will hold IN TRUST all cash, securities and other assets which the Trust may from time to time acquire and manage and dispose of the same upon the following terms and conditions for the pro rata benefit of the holders of Shares in the Trust and the Portfolios created hereunder as hereinafter set forth.

ARTICLE I
NAME AND DEFINITIONS

Section 1.1 Name and Location. The name of the statutory trust is Trust for Advised Portfolios; and the Trustees shall conduct the business of the Trust under that name or any other name(s) and in such location(s) as they may from time to time determine. The Trust shall constitute a Delaware statutory trust in accordance with the Delaware Statutory Trust Act. Any name change shall become effective on the execution by a majority of the Trustees of an instrument setting forth the new name and the filing of a certificate of amendment pursuant to Section 3810 of the Delaware Statutory Trust Act. Any such instrument shall not require the approval of the Shareholders but shall have the status of an amendment to this Trust Agreement.

Section 1.2 Definitions. Whenever used herein, unless otherwise required by the context or specifically provided:

(a) "1940 Act" means the Investment Company Act of 1940 and rules thereunder, all as amended from time to time;

(b) "Bylaws" means the Bylaws of the Trust as amended or restated from time to time.

(c) "Class" means any Class of Shares of any Portfolio established and designated under or in accordance with the provisions of Article IV;

(d) "Portfolio" means a series of Shares of the Trust established and designated under or in accordance with the provisions of Article IV hereof;

(e) "Prospectus" means a current prospectus under the Securities Act of 1933, as amended from time to time, including any "statement of additional information" that is incorporated by reference into such Prospectus.

(f) "Shareholder" means a record owner of Shares;

(g) "Shares" means the transferable units of interest into which the beneficial interest in the Trust and each Portfolio of the Trust and/or any Class of any Portfolio (as the context may require) shall be divided from time to time;

(h) "Series Trustees" means the trustees of the Trust solely with respect to a specified Portfolio, property and/or obligation, appointed in accordance with Article III, Section 3.7;

(i) "Trust" means the Trust for Advised Portfolios, the Delaware statutory trust established by this Trust Agreement;

(j) "Trust Agreement" means this Agreement and Declaration of Trust as amended or restated from time to time;

(k) "Trustees" means the Trustees of the Trust named herein or appointed or elected in accordance with Article III (excluding Series Trustees); and

(l) "Trust Property" means any and all property, real or personal, tangible or intangible, which is owned or held by or for the account of the Trust or any Portfolio, or by the Trustees on behalf of the Trust or any Portfolio.

ARTICLE II
PURPOSE AND CERTIFICATE OF TRUST

Section 2.1 Purpose of Trust. The purpose of the Trust is to conduct, operate, and carry on the business of an open-end management investment company registered under the 1940 Act through one or more Portfolios investing primarily in securities and other instruments and rights of a financial character, and to carry on such other business as the Trustees may from time to time determine pursuant to their authority under this Agreement.

ARTICLE III
TRUSTEES

Section 3.1 Number, Designation, Election, Term, etc.

(a) Number. The initial number of Trustees shall be five (5). The Trustees may thereafter increase or decrease the number of Trustees to a number other than the number theretofore determined. No decrease in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term, but the number of Trustees may be decreased in conjunction with the removal of a Trustee pursuant to subsection (d) of this Section 3.1.

(b) Term of Office of Trustees. Each Trustee shall serve during the life of the Trust and until its termination as hereinafter provided, except as such Trustee sooner dies, resigns, retires, is declared bankrupt or incompetent by a court of appropriate jurisdiction, or is removed. Subject to Section 16(a) of the 1940 Act, the Trustees may elect their own successors and may, pursuant to Section 3.l(e) hereof, appoint Trustees to fill vacancies.

(c) Resignation and Retirement. Any Trustee or Series Trustee may resign or retire, by written instrument signed by him and delivered to the other Trustees or to any officer of the Trust, and such resignation or retirement shall take effect upon such delivery or upon such later date as is specified in such instrument and shall be effective as to the Trust and each Portfolio hereunder.

(d) Removal. Subject to the requirements of Section 16(a) of the 1940 Act, any Trustee may be removed with or without cause at any time (i) by action of a majority of the remaining Trustees, or (ii) by action of Shareholders holding not less than a majority of the Shares then outstanding.

(e) Vacancies. In the case, of any vacancy or anticipated vacancy resulting from any reason, including without limitation the death, resignation, retirement, removal or incapacity of any of the Trustees, or resulting from an increase in the number of Trustees by the other Trustees, the other Trustees shall have all the power hereunder and the certification of the other Trustees of such vacancy shall be conclusive. Any vacancy may be filled by a majority of the remaining Trustees, subject to the provisions of Section 16(a) of the 1940 Act, through the appointment in writing of such other person as such remaining Trustees in their discretion shall determine. Such appointment shall be effective upon the written acceptance of the person named therein to serve as a Trustee and agreement by such person to be bound by the provisions of this Trust Agreement, except that any such appointment in anticipation of a vacancy to occur by reason of retirement, resignation or increase in number of Trustees, to be effective at a later date, shall become effective only at or after the effective date of said retirement, resignation or increase in number of Trustees. As soon as any Trustee so appointed shall have accepted such appointment and shall have agreed in writing to be bound by this Trust Agreement and the appointment is effective, the Trust estate shall vest in the new Trustee, together with the continuing Trustees, without any further act or conveyance. Unless required by any applicable provisions of the 1940 Act, no vacancy need be filled so long as there are at least two remaining Trustees.

(f) Effect of Death, Resignation, etc. The death, resignation, retirement, removal or incapacity of the Trustees or Series Trustees, or any one of them, shall not operate to annul or terminate the Trust or any Portfolio hereunder or to revoke or terminate any existing agency or contract created or entered into pursuant to the terms of this Trust Agreement.

(g) No Accounting. Except to the extent required by any applicable provisions of the 1940 Act or under circumstances that would justify his removal for cause, no person ceasing to be a Trustee or Series Trustee as a result of his death, resignation, retirement, removal or incapacity (nor the estate of any such person) shall be required to make an accounting to the Shareholders or remaining Trustees or Series Trustees upon such cessation.

Section 3.2 Powers of Trustees and Series Trustees. Subject to the provisions of this Trust Agreement, the business of the Trust shall be managed by the Trustees (and Series Trustees, solely to the extent consistent with the terms of their appointment), and they shall have all powers necessary or convenient to carry out that responsibility and the purpose of the Trust. The Trustees and Series Trustees in all instances shall act as principals, and are and shall be free from the control of the Shareholders. The Trustees (and Series Trustees, solely to the extent consistent with their appointment) shall have full power and authority to do any and all acts and to make and execute any and all contracts and instruments that they may consider necessary or appropriate in connection with the management and operation of the Trust. The Trustees (and Series Trustees, solely to the extent consistent with their appointment) shall have full authority and absolute power and control over the assets of the Trust and the business of the Trust to the same extent as if they were the sole owners of the assets of the Trust and the business in their own right, including such authority, power and control to do all acts and things as they, in their discretion, shall deem proper to accomplish the purposes of this Trust. Without limiting the foregoing, and to the extent not inconsistent with the 1940 Act or other applicable law, the Trustees shall have power and authority:

(a) Bylaws. To adopt Bylaws not inconsistent with this Trust Agreement providing for the conduct of the business and affairs of the Trust and to amend and repeal them to the extent that such Bylaws do not reserve that right to the Shareholders;

(b) Portfolios. To establish Portfolios, each such Portfolio to operate as a separate and distinct investment medium and with separately defined investment objectives and policies and distinct investment purposes, and to establish Classes of Shares of any Portfolio or divide the Shares of any Portfolio into Classes;

(c) Officers, Employees, Agents, and Consultants. To hire and terminate elect and remove such officers and employees and appoint and terminate such agents and consultants as they consider appropriate and to provide for the compensation of all of the foregoing;

(d) Committees. To appoint from their own number or from any number of Series Trustees, and terminate (subject to Section 3.7 of this Trust Agreement), any one or more committees consisting of one or more Trustees or Series Trustees, including without implied limitation an executive committee, which may, when the Trustees are not in session and subject to any applicable provisions of the 1940 Act, exercise some or all of the power and authority of the Trustees as the Trustees may determine;

(e) Service Providers. To employ one or more advisers, administrators, depositories and custodians and authorize any depository or custodian to employ subcustodians or agents and to deposit all or any part of such assets in a system or systems for the central handling of securities and debt instruments, retain transfer, dividend disbursing, accounting or shareholder servicing agents or any of the foregoing, provide for the distribution of Shares by the Trust through one or more distributors, principal underwriters or otherwise, and set record dates or times for the determination of Shareholders with respect to various matters;

(f) Compensation. To compensate or provide for the compensation of the Trustees, Series Trustees, officers, advisers, administrators, custodians, other agents, consultants and employees of the Trust or the Trustees on such terms as they deem appropriate;

(g) Delegation. To delegate to any officer of the Trust, to any committee of the Trustees, to any Series Trustee or committee of Series Trustee(s), and to any employee, adviser, administrator, distributor, depository, custodian, transfer and dividend disbursing agent, or any other agent or consultant of the Trust such authority, powers, functions and duties as they consider desirable or appropriate for the conduct of the business and affairs of the Trust, including without implied limitation the power and authority to act in the name of the Trust and any Portfolio and of the Trustees, to sign documents and to act as attorney-in-fact for the Trustees;

(h) Investments. To invest and reinvest cash and other property, and to hold cash or other property uninvested in accordance with the investment policies and restrictions of each Portfolio as set out from time to time in the prospectus for the Portfolio;

(i) Disposition of Assets. To sell, exchange, lend, pledge, hypothecate, write options on and lease any or all of the assets of the Trust;

(j) Ownership Powers. To vote or give assent, or exercise any rights of ownership, with respect to stock or other securities, debt instruments or property; and to execute and deliver proxies or powers of attorney to such person or persons as the Trustees shall deem proper, granting to such person or persons such power and discretion with relation to securities, debt instruments or property as the Trustees shall deem proper;

(k) Subscription. To exercise powers and rights of subscription or otherwise which in any manner arise out of ownership of securities or debt instruments;

(l) Form of Holding. To hold any security, debt instrument or property in a form not indicating any trust, whether in bearer, unregistered or other negotiable form, or in the name of the Trustees or of the Trust or of any Portfolio or in the name of a custodian, subcustodian or other depository or a nominee or nominees or otherwise;

(m) Reorganization, etc. To consent to or participate in any plan for the reorganization, consolidation or merger of any corporation or issuer, any security or debt instrument of which is held in the Trust; to consent to any contract, lease, mortgage, purchase or sale of property by such corporation or issuer; and to pay calls or subscriptions with respect to any security or debt instrument held in the Trust;

(n) Voting Trusts, etc. To join with other holders of any securities or debt instruments in acting through a committee, depository, voting trustee or otherwise, and in that connection to deposit any security or debt instrument with, or transfer any security or debt instrument to, any such committee, depository or trustee, and to delegate to them such power and authority with relation to any security or debt instrument (whether or not so deposited or transferred) as the Trustees shall deem proper, and to agree to pay, and to pay, such portion of the expenses and compensation of such committee, depository or trustee as the Trustees shall deem proper;

(o) Compromise. To litigate, compromise, arbitrate, settle, or otherwise adjust claims in favor of or against the Trust or any Portfolio or any matter in controversy, including but not limited to claims for taxes;

(p) Partnerships, etc. To enter into joint ventures, general or limited partnerships and any other combinations or associations;

(q) Borrowing and Security. To borrow funds or other property in the name of the Trust exclusively for Trust purposes, and in connection therewith, to issue notes or other evidence of indebtedness, and to mortgage and pledge the assets of the Trust or any part thereof to secure any or all of such indebtedness;

(r) Guarantees, etc. To endorse or guarantee the payment of any notes or other obligations of any person; to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof; and to mortgage and pledge the Trust property or any part thereof to secure any of or all such obligations;

(s) Insurance. To purchase and pay for entirely out of Trust property such insurance as the Trustees may deem necessary or appropriate for the conduct of the business, including, without limitation, insurance policies insuring the assets of the Trust and payment of distributions and principal on its Portfolio investments, and insurance policies insuring the Shareholders, Trustees, officers, employees, agents, consultants, investment advisers, managers, administrators, distributors, principal underwriters, or independent contractors of the Trust individually against all claims and liabilities of every nature arising by reason of holding, being or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such person in any such capacity, including any action taken or omitted that may be determined to constitute negligence, whether or not the Trust would have the power to indemnify such person against such liability;

(t) Pensions etc. To adopt, establish and carry out pension, profit-sharing, share bonus, share purchase, savings, thrift and other retirement, incentive and benefit plans, trust and provisions, including the purchasing of life insurance and annuity contracts as a means of providing such retirement and other benefits, for any or all of the Trustees, officers, employees and agents of the Trust; and

(u) Distribution Plans. To adopt on behalf of the Trust or any Portfolio or any Class thereof a plan of distribution and related agreements thereto pursuant to the terms of Rule 12b-1 under the 1940 Act and to make payments from the assets of the Trust or the relevant Portfolio or Portfolios pursuant to said Rule 12b-1 Plan.

The foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Trustees. Any action by one or more of the Trustees in their capacity as such hereunder shall be deemed an action on behalf of the Trust or the applicable Portfolio, and not an action in an individual capacity.

The Trustees shall not be limited to investing in obligations maturing before the possible termination of the Trust.

No one dealing with the Trustees shall be under any obligation to make any inquiry concerning the authority of the Trustees, or to see to the application of any payments made or property transferred to the Trustees or upon their order.

Section 3.3 Certain Contracts. Subject to compliance with any applicable provisions of the 1940 Act, the Trustees (and Series Trustees, solely to the extent consistent with the terms of their appointment) may, at any time and from time to time and without limiting the generality of their powers and authority otherwise set forth herein, enter into one or more contracts with any one or more corporations, trusts, associations, partnerships, limited partnerships, other type of organizations, or individuals (a "Contracting Party"), to provide for the performance and assumption of some or all of the following services, duties and responsibilities to, for or on behalf of the Trust and/or any Portfolio, and/or any Class of Shares, and/or the Trustees, and to provide for the performance and assumption of such other services, duties and responsibilities in addition to those set forth below as the Trustees may determine appropriate:

(a) Advisory. Subject to any directions of the Trustees and in accordance with the investment policies and restrictions of each Portfolio as set out from time to time in the prospectus for the Portfolio, with respect to the investments of the Trust or the assets belonging to any Portfolio of the Trust (as that phrase is defined in subsection (a) of Section 4.3 hereof), to manage such investments and assets, make investment decisions with respect thereto, and to place purchase and sale orders for Portfolio transactions relating to such investments and assets;

(b) Administration. Subject to any directions of the Trustees and in conformity with any policies of the Trustees with respect to the operations of the Trust and each Portfolio (including each Class thereof), to supervise all or any part of the operations of the Trust and each Portfolio, and to provide all or any part of the administrative and clerical personnel, office space and office equipment and services appropriate for the efficient administration and operations of the Trust and each Portfolio;

(c) Distribution. To distribute the Shares of the Trust and each Portfolio (including any Classes thereof), through a principal underwriter of such Shares or otherwise;

(d) Custodian and Depository. To act as depository for and to maintain custody of the property of the Trust and each Portfolio and accounting records in connection therewith;

(e) Transfer and Dividend Disbursing Agent. To maintain records of the ownership of outstanding Shares, the issuance and redemption and the transfer thereof, and to disburse any dividends declared by the Trustees and in accordance with the policies of the Trustees and/or the instructions of any particular Shareholder to reinvest any such dividends;

(f) Shareholder Servicing. To provide services with respect to the relationship of the Trust and its Shareholders, records with respect to Shareholders and their Shares, and similar matters; and

(g) Accounting. To handle all or any part of the accounting and auditing responsibilities, whether with respect to the Trust's Property, Shareholders or otherwise.

The same person may be the Contracting Party for some or all of the services, duties and responsibilities to, for and of the Trust and/or the Trustees, and the contracts with respect thereto may contain such terms interpretive of or in addition to the delineation of the services, duties and responsibilities provided for in this Section 3.3, including provisions that are not inconsistent with any applicable requirement of the 1940 Act relating to the standard of duty of and the rights to indemnification of the Contracting Party and others, as the Trustees may determine. Nothing herein shall preclude, prevent or limit the Trust or a Contracting Party from entering into sub-contractual arrangements relative to any of the matters referred to in Sections 3.3(a) through (g) hereof.

The fact that:

(i) any of the Shareholders, Trustees or officers of the Trust is a Shareholder, director, officer, partner, trustee, employee, manager, investment adviser, principal underwriter or distributor or agent of or for any Contracting Party, or of or for any parent or affiliate of any Contracting Party or that the Contracting Party or any parent or affiliate thereof is a Shareholder or has an interest in the Trust or any Portfolio, or that

(ii) any Contracting Party may have a contract providing for the rendering of any similar services to one or more other corporations, trusts, associations, partnerships, limited partnerships or other organizations, or have other business or interests,

shall not affect the validity of any contract for the performance and assumption of services, duties and responsibilities to, for or of the Trust or any Portfolio and/or the Trustees or disqualify any Shareholder, Trustee or officer of the Trust from voting upon or executing the same or create any liability or accountability to the Trust, any Portfolio or its Shareholders, provided that, in the case of any relationship or interest referred to in the preceding clause (i) on the part of any Trustee or officer of the Trust either:

(x) the material facts as to such relationship or interest and the contract involved is approved in good faith by a majority of such Trustees not having any such relationship or interest (even though such unrelated or disinterested Trustees are less than a quorum of all of the Trustees); or

(y) if subject to vote by Shareholders, the material facts as to such relationship or interest and as to the contract have been disclosed to or are known by the Shareholders entitled to vote thereon and the contract involved is specifically approved in good faith by vote of the Shareholders;

and the specific contract involved is fair to the Trust as of the time it is authorized, approved or ratified by the Trustees or by the Shareholders.

Section 3.4 Payment of Trust Expenses and Compensation of Trustees. The Trustees are authorized to pay or to cause to be paid out of the principal or income of the Trust or any Portfolio, or partly out of principal and partly out of income, and to charge or allocate the same to, between or among such one or more of the Portfolios and/or one or more Classes of Shares thereof that may be established and designated pursuant to Article IV, as the Trustees deem fair, all expenses, fees charges, taxes and liabilities incurred or arising in connection with the Trust, any Portfolio and/or any Class of Shares thereof, or in connection with the management thereof, including, but not limited to, the Trustees' compensation and such expenses and charges for the services of the Trust's Series Trustees, officers, employees, investment adviser, administrator, distributor, principal underwriter, auditors, counsel, depository, custodian, transfer agent, dividend disbursing agent, accounting agent, shareholder servicing agent, and such other agents, consultants, and independent contractors and such other expenses and charges as the Trustees may deem necessary or proper to incur. Without limiting the generality of any other provision hereof, the Trustees shall be entitled to reasonable compensation from the Trust for their services as Trustees and may fix the amount of such compensation.

Section 3.5 Ownership of Assets of the Trust. Title to all of the assets of the Trust and each Portfolio shall at all times be considered as vested in the Trustees on behalf of the Trust, except that the Trustees shall have power to cause legal title to any Trust property to be held by or in the name of the Trust, or in the name of any other person as nominee, on such terms as the Trustees may determine. The right, title and interest of the Trustees in the Trust property shall vest automatically in each person who may hereafter become a Trustee. Upon the resignation, removal or death of a Trustee, he or she shall automatically cease to have any right, title or interest in any of the Trust property, and the right, title and interest of such Trustee in the Trust property shall vest automatically in the remaining Trustees. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

Section 3.6 Action by Trustees. Except as otherwise provided by applicable provisions of the 1940 Act or other applicable law, this Trust Agreement or the Bylaws, any action to be taken by the Trustees or Series Trustees on behalf of or with respect to the Trust or any Portfolio or Class thereof may be taken by (a) a majority vote of the Trustees or Series Trustees, as the case may be, present at a meeting of Trustees or Series Trustees, as the case may be (a quorum, consisting of at least one-half of the Trustees or Series Trustees, as the case may be, then in office, being present), within or without Delaware, including any meeting held by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence at a meeting; or (b) a consent or consents in writing, setting forth the action so taken, and signed by a majority of the Trustees or Series Trustees, as the case may be.

Section 3.7 Series Trustees. The Trustees, acting by a majority vote of the Trustees present at a meeting of Trustees (a quorum, consisting of at least one-half of the Trustees then in office, being present) or by a consent or consents in writing, setting forth the action so taken, and signed by a majority of the Trustees, may:

(a) appoint up to three (3) Series Trustees to serve as trustees with respect to any specified Portfolio, property and/or obligation of the Trust, and not in any other respect, for such duration and on such terms as the Trustees may determine, provided that such terms are in accordance with the 1940 Act and other applicable law; and

(b) delegate to such Series Trustees, or a committee of one or more such Series Trustee(s), such authority, powers, functions and duties as the Trustees consider desirable or appropriate for the conduct of the business and affairs of the Trust, solely with respect to the Portfolio, property and/or obligation for which the Series Trustee(s) were appointed, including, without implied limitation, the power and authority to act in the name of the Trust with respect to such Portfolio, property and/or obligation, and in the name of the relevant Portfolio itself, to sign documents and to act as attorney-in-fact for the Trustees with respect to such Portfolio, property and/or obligation.

In appointing any Series Trustee(s) and/or committee of Series Trustees, and notwithstanding Section 3.2(d) of this Trust Agreement, the Trustees may impose such terms and conditions regarding the removal of such Series Trustee(s) and/or the termination of any committee of such Series Trustee(s) as they deem appropriate. A Series Trustee shall not be deemed to have the authority, powers, functions or duties of a "Trustee" under this Trust Agreement except as expressly set forth in this Trust Agreement or in a resolution of the Trustees appointing such Series Trustee. A Series Trustee shall have no authority, power, function or duty with respect to any Portfolio, property and/or obligation other than the Portfolio, property and/or obligation for which such Series Trustee was appointed.

Section 3.8. Series Trustee Vacancy. In the case of any vacancy or anticipated vacancy resulting from any reason, including without limitation the death, resignation, retirement, removal or incapacity of any Series Trustee, a replacement Series Trustee may only be appointed by the Trustees consistent with Section 3.7 hereof.

ARTICLE IV
SHARES

Section 4.1 Beneficial Interest. The beneficial interest in the Trust shall be divided into an unlimited number of Shares, all without par value.

Section 4.2 Portfolios and Classes.

(a) The Trustees shall have the authority from time to time to issue Shares in one or more series (each of which series of Shares shall represent the beneficial interest in a separate and distinct Portfolio of the Trust as they deem necessary or desirable). The Trustees shall have exclusive power without the requirement of Shareholder approval to establish and designate all terms and conditions of such separate and distinct Portfolios, including as to fees and charges, right of redemption and the price, terms and manner of redemption, special and relative rights as to dividends and other distributions and on liquidation, sinking or purchase fund provisions, conversion rights, conditions under which the several Portfolios shall have separate voting rights or no voting rights, and arrangements for distribution and administration.

(b) The Trustees shall have exclusive power, without the requirement of Shareholder approval, to operate one or more Portfolios or a Class thereof of the Trust as an exchange-traded fund ("ETF") and to list the Shares of any such ETF on one or more securities exchanges and to cease such operation or listing at any time.

(c) The Trustees shall have exclusive power, without the requirement of Shareholder approval, to issue Classes of Shares of any Portfolio or divide the Shares of any Portfolio into Classes, and to establish all terms and conditions of each Class, including as to fees, charges, right of redemption and the price terms and manner of redemption, special and relative rights as to dividends and other distributions and on liquidation, sinking or purchase fund provisions, conversion rights, conditions under which several Portfolios shall have separate voting rights or no voting rights, and arrangements for distribution or administration. The fact that a Portfolio shall have initially been established and designated without any specific establishment or designation of Classes (i.e., that all Shares of such Portfolio are initially of a single Class), or that a Portfolio shall have more than one established and designated Class, shall not limit the authority of the Trustees to establish and designate or redesignate separate Classes, or one or more further Classes, of said Portfolio without approval of the holders of the initial Class thereof.

(d) The number of authorized Shares and the number of Shares of each Portfolio or Class thereof that may be issued is unlimited, and the Trustees may issue Shares of any Portfolio or Class thereof for such consideration and on such terms as they may determine (or for no consideration if pursuant to a Share dividend or split-up), all without action or approval of the Shareholders. All Shares when so issued on the terms determined by the Trustees shall be fully paid and non-assessable (but may be subject to any deemed contribution of capital as described in Section 4.3(h) below). The Trustees may classify or reclassify any unissued Shares or any Shares previously issued and reacquired by any Portfolio or Class thereof into one or more Portfolios or Classes thereof that may be established and designated from time to time. The Trustees may hold as treasury Shares, reissue for such consideration and on such terms as they may determine, or cancel, at their discretion from time to time, any Shares of any Portfolio or Class thereof reacquired by the Trust.

(e) The Trustees shall have exclusive power, without the requirement of Shareholder approval, to determine that Shares of any Portfolio or Class shall be issued and redeemed only in aggregations of such number of Shares as may be determined by the Trustees from time to time with respect to any Portfolio or Class. The number of Shares comprising an aggregation for purposes of issuance or redemption with respect to any Portfolio or Class shall be referred to as a "Creation Unit" or such other term as the Trustees shall determine. The Trustees shall have the power, in connection with the issuance or redemption of any Creation Unit, to charge such transaction fees or other fees as the Trustees shall determine. In addition, the Trustees may, from time to time in their sole discretion, determine to change the number of Shares constituting a Creation Unit.

(f) The Trustees may from time to time close the transfer books or establish record dates and times for the purpose of determining the holders of Shares entitled to be treated as such, in accordance with the provisions of the Trust's Bylaws.

(g) Any Trustee, Series Trustee, officer or other agent of the Trust, and any organization in which any such person is interested may acquire, own, hold and dispose of Shares of any Portfolio (including any Classes thereof) of the Trust to the same extent as if such person were not a Trustee, Series Trustee, officer or other agent of the Trust; and the Trust may issue and sell or cause to be issued and sold and may purchase Shares of any Portfolio (including any Classes thereof) from any such person or any such organization subject only to the general limitations, restrictions or other provisions applicable to the sale or purchase of Shares of such Portfolio (including any Classes thereof) generally.

Section 4.3 Relative Rights and Preferences Among Portfolios. The Shares of Portfolios that may from time to time be established and designated by the Trustees shall (unless the Trustees otherwise with respect to some future Portfolio at the time of establishing and designating the same) have the following relative rights and preferences:

(a) Assets Belonging to Portfolios. All net consideration received by the Trust for the issuance or sale of Shares of a particular Portfolio or any Classes thereof, together with all assets in which such consideration is invested or reinvested, all income, earnings, profits, and proceeds thereof, including, without limitation, any proceeds derived from the sale, exchange or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds in whatever form the same may be, shall be held by the Trustees in trust for the benefit of the holders of Shares of that Portfolio and shall irrevocably belong to the Portfolio for all purposes, subject only to the rights of creditors of such Portfolio, and shall be so recorded upon the books of account of the Trust. Such consideration, assets, income, earnings, profits, and proceeds thereof, including, without limitation, any proceeds derived from the sale, exchange or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds, in whatever form the same may be, together with any General Items (as hereinafter defined) allocated to that Portfolio as provided in the following sentence, are herein referred to as "assets belonging to" that Portfolio. In the event that there are any assets, income, earnings, profits, and proceeds thereof, funds, or payments which are not readily identifiable as belonging to any particular Portfolio (collectively "General Items"), the Trustees shall allocate such General Items to, between or among any one or more of the Portfolios established and designated from time to time in such manner and on such basis as they, in their sole discretion, deem fair and equitable. Any General Items so allocated to a particular Portfolio shall belong to that Portfolio. Each such allocation by the Trustees shall be conclusive and binding upon the holders of all Shares of all Portfolios for all purposes.

(b) Liabilities Belonging to Portfolios. The assets belonging to each particular Portfolio shall be charged with the liabilities in respect of that Portfolio and all expenses, costs, charges and reserves attributable to that Portfolio (including, without limitation, the expenses and costs associated with the appointment and activities of any Series Trustee(s) for such Portfolio). Any general liabilities, expenses, costs, charges or reserves of the Trust which are not readily identifiable as belonging to any particular Portfolio shall be allocated and charged by the Trustees to, between or among any one or more of the Portfolios established and designated from time to time in such manner and on such basis as the Trustees in their sole discretion deem fair and equitable. The liabilities, expenses, costs, charges and reserves so allocated by the Trustees shall be conclusive and binding upon the Shareholders, creditors and any other persons dealing

with the Trust or any Portfolio (including any Classes thereof) for all purposes. Any creditor of any Portfolio may look only to the assets of that Portfolio to satisfy such creditor's debt.

(c) Dividends. Dividends and distributions on Shares of a particular Portfolio may be paid with such frequency as the Trustees may determine, which may be daily or otherwise pursuant to a standing resolution or resolutions adopted only once or with such frequency as the Trustees may determine to the holders of Shares of that Portfolio, from such of the income and capital gains, accrued or realized, from the assets belonging to that Portfolio, as the Trustees may determine, after providing for actual and accrued liabilities belonging to that Portfolio. All dividends and distributions on Shares of a particular Portfolio thereof shall be distributed pro rata to each holder of Shares of that Portfolio in proportion to the total net asset value of Shares of that Portfolio held by such holder at the date and time of record established for the payment of such dividends or distributions, except that, in connection with any dividend or distribution program or procedure, the Trustees may determine that no dividend or distribution shall be payable on Shares as to which the Shareholder's purchase order and/or payments have not been received by the time or times established by the Trustees under such program or procedure. Such dividends and distributions may be made in cash or Shares of that Portfolio or a combination thereof as determined by the Trustees or pursuant to any program that the Trustees may have in effect at the time for the election by each Shareholder of the mode of the making of such dividend or distribution to that Shareholder. Any such dividend or distribution paid in Shares will be paid at the net asset value thereof as determined in accordance with subsection (h) of this Section 4.3.

The Trustees shall have full discretion to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Shareholders.

(d) Liquidation. In the event of the liquidation or dissolution of the Trust or any Portfolio thereof, the holders of Shares of each affected Portfolio shall be entitled to receive, when and as declared by the Trustees, the excess of the assets belonging to that Portfolio over the liabilities belonging to that Portfolio. The assets so distributable to the holders of Shares of any particular Portfolio shall be distributed among such holders in proportion to the aggregate net asset value of all the Snares of that Portfolio held by them and recorded on the books of the Trust. The liquidation of any particular Portfolio or Class thereof may be authorized at any time by vote of a majority of the Trustees then in office.

(e) Voting. On each matter submitted to a vote of the Shareholders, each holder of a Share shall be entitled to one vote for each whole Share irrespective of the Portfolio, and all Shares of all Portfolios shall vote together; provided, however, that (i) as to any matter with respect to which a separate vote of one or more Portfolios or Classes is required by any applicable provisions of the 1940 Act, such requirement shall apply in lieu of all Shares of all Portfolios voting together; and (ii) in any event, as to any matter which affects only the interests of one or more particular Portfolios or Classes, only the holders of Shares of the one or more affected Portfolios or Classes shall be entitled to vote, and each such Portfolio or Class shall vote as a separate class.

(f) Redemption by Shareholder. Each holder of Shares or Creation Units, as applicable, of a particular Portfolio shall have the right at such times as may be permitted by the Trust, consistent with the requirements of the 1940 Act, to require the Trust to redeem Shares or Creation Units, as applicable, of that Portfolio on terms consistent with any applicable requirements of the 1940 Act and at a redemption price equal to the net asset value per Share of that Portfolio or Class thereof determined in accordance with subsection (h) of this Section 4.3 after the Shares or Creation Units, as applicable, are properly tendered for redemption, subject to any contingent deferred sales charge or redemption charge in effect at the time of redemption. Payment of the redemption price of Shares of any Portfolio or Class shall be in cash, securities, or other assets, or any combination thereof, belonging to such Portfolio, subject to requirements of the 1940 Ac

Notwithstanding the foregoing, the Trust may postpone payment of the redemption price and may suspend the right of the holders of Shares of any Portfolio to require the Trust to redeem Shares or Creation Units, as applicable, of that Portfolio during any period or at any time when (and to the extent) permissible under the 1940 Act.

(g) Redemption by Trust. Each Share of each Portfolio is subject to redemption by and at the option of the Trust at the redemption price that would be applicable if such Share was then being redeemed by the Shareholder pursuant to subsection (f) of this Section 4.3: (i) at any time, if the Trustees determine in their sole discretion that failure to so redeem may have materially adverse consequences to the Trust or any Portfolio or to the holders of the Shares of the Trust or any Portfolio thereof or Class thereof, or (ii) upon such other conditions as may from time to time be determined by the Trustees and set forth in the then current Prospectus of the Trust. Upon such redemption, the holders of the Shares so redeemed shall have no further right with respect thereto other than to receive payment of such redemption price.

Notwithstanding anything to the contrary herein, if the Shares of any Portfolio or Class are issued in Creation Units, then only Shares of such Portfolio or Class comprising a Creation Unit shall be redeemable by the Trust with respect to any applicable Portfolio or Class. Unless the Trustees otherwise shall determine, there shall be no redemption of any partial or fractional Creation Unit.

(h) Net Asset Value. The net asset value per Share of any Portfolio that has only one Class of Shares outstanding shall be (i) the quotient obtained by dividing the value of the net assets of that Portfolio (being the value of the assets belonging to that Portfolio less the liabilities belonging to that Portfolio) by the total number of Shares of that Portfolio outstanding; all determined in accordance with the methods and procedures, including without limitation those with respect to rounding, established by the Trustees from time to time.

The Trustees may determine to maintain the net asset·value per Share of any Portfolio at a designated constant dollar amount and in connection therewith may adopt procedures not inconsistent with any applicable provisions of the 1940 Act for the continuing declarations of income attributable to that Portfolio as dividends payable in additional Shares of that Portfolio at the designated constant dollar amount and for the handling of any losses attributable to that Portfolio. Such procedures may provide that in the event of any loss each Shareholder shall be deemed to have contributed to the capital of the Trust attributable to that Portfolio his pro rata

portion of the total number of Shares required to be canceled in order to permit the net asset value per Share of that Portfolio to be maintained, after reflecting such loss, at the designated constant dollar amount. Each Shareholder of the Trust shall be deemed to have agreed, by his investment in any Portfolio with respect to which the Trustees shall have adopted any such procedure, to make the contribution referred to in the preceding sentence in the event of any such loss.

(i) Transfer. All Shares of each Portfolio shall be transferable, but transfers of Shares will be recorded on the Share transfer records of the Trust applicable to a Portfolio only at such times as Shareholders shall have the right to require the Trust to redeem Shares of that Portfolio and of the same Class and at such other times as may be permitted by the Trustees.

(j) Equality. Except as provided herein, all Shares of each particular Portfolio shall represent an equal proportionate interest in the assets belonging to that Portfolio, subject to the liabilities belonging to that Portfolio, and each Share of any Portfolio shall be equal to each other Share of that Portfolio or Class; but the provisions of this sentence shall not restrict any distinctions permissible under subsection (c) of this Section 4.3 that may exist with respect to dividends and distributions on Shares of the same Portfolio or Class. The Trustees may from time to time divide or combine the Shares of any Portfolio into a greater or lesser number of Shares of that Portfolio without thereby changing the proportionate beneficial interest in the assets belonging to that Portfolio or those Shares or in any way affecting the rights of any Shares of any Portfolio.

(k) Fractions. Any fractional Share of any Portfolio shall carry proportionately all the rights and obligations of a whole Share of that Portfolio, including rights and obligations with respect to voting, receipt of dividends and distributions, redemption of Shares, and liquidation of the Trust.

Section 4.4 Conversion Rights. Subject to compliance with any applicable requirements of the 1940 Act, the Trustees shall have the authority to provide that holders of Shares of any Portfolio or Class thereof shall have the right to convert said Shares into Shares of one or more other Portfolios or Classes thereof in accordance with such requirements and procedures as may be established by the Trustees.

Section 4.5 Class Differences. The relative rights and preferences of the Classes of any Portfolio may differ in such respects as the Trustees may determine to be appropriate in their sole discretion. Except as so set forth, all Classes of the same Portfolio's Shares shall have equal rights and preferences.

Section 4.6 Ownership of Shares. The ownership of Shares shall be recorded on the books of the Trust or of a transfer or similar agent for the Trust, which books shall be maintained separately for the Shares of each Portfolio and each Class thereof that has been established and designated. No certificates certifying the ownership of Shares need be issued except as the Trustees may otherwise determine from time to time. The Trustees may make such rules as they consider appropriate for the issuance of Share certificates, the use of facsimile signatures, the transfer of Shares and similar matters. The record books of the Trust as kept by the Trust or any transfer or similar agent, as the case may be, shall be conclusive as to who are the Shareholders

and as to the number of Shares of each Portfolio and Class thereof held from time to time by each such Shareholder.

Section 4.7 Investments in the Trust. The Trustees may accept investments in the Trust and each Portfolio from such persons and on such terms and for such consideration, not inconsistent with any applicable provisions of the 1940 Act, as they from time to time authorize. The Trustees may authorize any distributor, principal underwriter, custodian, transfer agent or other person to accept orders for the purchase of Shares that conform to such authorized terms and to reject any purchase orders for Shares whether or not conforming to such authorized terms.

Section 4.8 No Preemptive Rights. Shareholders shall have no preemptive or other right to subscribe to any additional Shares or other securities issued by the Trust or any Portfolio.

Section 4.9 Status of Shares and Limitation of Personal Liability. Shares shall be deemed to be personal property giving only the rights provided in this Trust Agreement. Every Shareholder by virtue of having become a Shareholder shall be held to have expressly assented and agreed to the terms hereof and to have become a party hereto. Ownership of Shares shall not entitle the Shareholder to any title in or to the whole or any part of the Trust property or right to call for a partition or division of the same or for an accounting, nor shall the ownership of Shares constitute the Shareholders to be partners. Neither the Trust nor the Trustees, nor any officer, employee or agent of the Trust shall have any power to bind personally any Shareholder, nor except as specifically provided herein to call upon any Shareholder for the payment of any sum of money or assessment whatsoever other than such as the Shareholder may at any time personally agree to pay.

Section 4.10 No Appraisal Rights. Shareholders shall have no right to demand payment for their Shares or any other rights of dissenting Shareholders in the event the Trust participates in any transaction which would give rise to appraisal or dissenters' rights by a Shareholder of a corporation organized under the General Corporation Law of the State of Delaware, or otherwise.

ARTICLE V
SHAREHOLDERS' VOTING POWERS AND MEETING

Section 5.1 Voting Powers. Shareholders shall have power to vote only: (i) to elect Trustees or Series Trustees, provided that a meeting of Shareholders has been called for that purpose; (ii) to remove Trustees or Series Trustees, provided that a meeting of Shareholders has been called for that purpose; (iii) with respect to the matters covered in Section 5.2 below; and (iv) approve such additional matters as may be required by law or as the Trustees, in their sole discretion, shall determine.

Until Shares are issued, the Trustees may exercise all rights of Shareholders and may take any action required or permitted by law, this Trust Agreement or any of the Bylaws of the Trust to be taken by Shareholders.

The vote necessary to approve any matter shall be set forth in the Bylaws, except as set forth in Section 5.2.

Section 5.2 Additional Voting Powers and Voting Requirements for Certain Actions. Notwithstanding any other provision of this Trust Agreement, Shareholder approval shall be required to approve any amendment to Article VI of this Trust Agreement that would have the effect of increasing the liability (or potential liability) or reducing the indemnification available to Shareholders or former Shareholders. Any such action, as well as any repeal or amendment of this Section 5.2, shall require the affirmative vote or consent of Shareholders owning at least 66 2/3% of the outstanding Shares entitled to vote thereon.

Section 5.3 Non Exclusivity. The voting requirements set forth in this Section 5.2 shall be in addition to, and not in lieu of, any vote or consent of the Shareholders otherwise required by applicable law (including, without limitation, any separate vote by Portfolio (or Class) that may be required by the 1940 Act or by other applicable law) or by this Trust Agreement.

ARTICLE VI
LIMITATION OF LIABILITY; INDEMNIFICATION

Section 6.1 Trustees, Series Trustees, Shareholders, Etc. Not Personally Liable: Notice. All persons extending credit to, contracting with or having any claim against a Portfolio of the Trust shall look only to the assets of the Portfolio with which such person dealt for payment under such credit, contract or claim. Neither the Shareholders of any Portfolio, nor the Trustees, nor any of the Trust's Series Trustees, officers, employees or agents, whether past, present or future, shall be personally liable therefor. Every note, bond, contract, instrument, certificate or undertaking and every other act or thing whatsoever issued, executed or done by or on behalf of the Trust, any Portfolio or the Trustees or any of them in connection with the Trust shall be conclusively deemed to have been issued, executed or done only by or for the Trust (or the Portfolio) or by or for the Trustees or Series Trustees in their official capacity with the Trust and not personally. Nothing in this Trust Agreement shall protect any Trustee, Series Trustee, officer, employee or agent against any liability to the Trust or the Shareholders to which such Trustee or officer would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of the office of Trustee or of such Series Trustee or officer.

Every note, bond, contract, instrument, certificate or undertaking made or issued by the Trustees or by any duly authorized officer or Series Trustee shall give notice that the same was executed or made by or on behalf of the relevant Portfolio or Portfolios of the Trust or by them as Trustees or as officers or Series Trustees and not individually and that the obligations of such instrument are not binding upon any of them or the Shareholders individually but are binding only upon the assets and property of such Portfolio or Portfolios, as the case may be. However, the omission of any such notice shall not operate to bind any Trustee, Series Trustee, officer or Shareholder individually or otherwise invalidate any such note, bond, contract, instrument, certificate or undertaking.

Section 6.2 Trustees' or Series Trustees' Good Faith Action; Expert Advice; No Bond Surety. The exercise by the Trustees or Series Trustees of their powers and discretion hereunder shall be binding upon all interested persons and entities. A Trustee or Series Trustee shall be liable solely for his own willful misfeasance, bad faith, gross negligence or reckless disregard of

the duties involved in the conduct of the office of Trustee or Series Trustee, and for nothing else, and shall not be liable for errors of judgment or mistakes of fact or law. Subject to the foregoing, (a) no Trustee or Series Trustee shall be responsible or liable in any event for any neglect or wrongdoing of any other officer, agent, employee, consultant, investment adviser, administrator, distributor or principal underwriter, custodian or transfer, dividend disbursing, shareholder servicing or accounting agent of the Trust, nor shall any Trustee or Series Trustee be responsible for the act or omission of any other Trustee or Series Trustee; (b) the Trustees and Series Trustees may take advice of counsel or other qualified persons with respect to the meaning and operation of this Trust Agreement and their duties as Trustees and Series Trustees, as applicable, and shall be under no liability for any act or omission in accordance with such advice or for failing to follow such advice; and (c) in discharging their duties, the Trustees and Series Trustees, when acting in good faith, shall be entitled to rely upon the books of account of the Trust and upon written reports made to the Trustees or Series Trustees by any officer appointed by them, any independent public accountant, and (with respect to the subject matter of the contract involved) any officer, partner or responsible employee of a Contracting Party appointed by the Trustees or Series Trustees pursuant to Section 3.3. The Trustees and Series Trustees as such shall not be required to give any bond or surety or any other security for the performance of their duties.

Section 6.3 Indemnification of Shareholders. In case any Shareholder (or former Shareholder) of any Portfolio of the Trust or Class shall be charged or held to be personally liable for any obligation or liability of the Trust solely by reason of being or having been a Shareholder and not because of such Shareholder's acts or omissions or for some other reason, said Portfolio (upon proper and timely request by the Shareholder) shall assume the defense against such charge and satisfy any judgment thereon, and the Shareholder or former Shareholder (or in the case of a corporation or other entity, its corporate or other general successor) shall be entitled out of the assets of said Portfolio to be held harmless from and indemnified against all loss and expense arising from such liability.

Section 6.4 Indemnification of Trustees, Officers, etc. The Trust shall indemnify (from the assets of the Portfolio or Portfolios in question) each of its Trustees, Series Trustees and officers (including persons who serve at the Trust's request as directors, officers or trustees of another organization in which the Trust has any interest as a Shareholder, creditor or otherwise (hereinafter referred to as "Covered Persons") against all liabilities, including but not limited to amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and expenses, including reasonable accountants' and counsel fees, incurred by any Covered Person in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or legislative body, in which such Covered Person may be or may have been involved as a party or otherwise or with which such person may be or may have been threatened, while in office or thereafter, by reason of being or having been such a Trustee, Series Trustee. officer, director or trustee, except with respect to any matter as to which it has been determined that such Covered Person had acted with willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such Covered Person's office (such conduct referred to hereinafter as "Disabling Conduct"). A determination that the Covered Person is entitled to indemnification may be made by (i) a final decision on the merits by a court or other body before whom the proceeding was brought that the person to be indemnified was not liable by reason of Disabling Conduct, (ii) dismissal of a court action or an

administrative proceeding against a Covered Person for insufficiency of evidence of Disabling Conduct, (iii) a reasonable determination, based upon a review of the facts, that the Covered Person was not liable by reason of Disabling Conduct by (a) a vote of a majority of a quorum of Trustees who are neither "interested persons" of the Trust as defined in section 2(a)(19) of the 1940 Act nor parties to the proceeding ("disinterested Trustees"), or (b) an independent legal counsel in a written opinion, or (iv) as otherwise permitted by the 1940 Act. Expenses, including accountants' and counsel fees so incurred by any such Covered Person (but excluding amounts paid in satisfaction of judgments, in compromise or as fines or penalties), may be paid from time to time by the Portfolio(s) in question in advance of the final disposition of any such action, suit or proceeding, provided that the Covered Person shall have undertaken to repay the amounts so paid to the Portfolio(s) in question if it is ultimately determined that indemnification of such expenses is not authorized under this Article VI and (i) the Covered Person shall have provided security for such undertaking; (ii) the Trust shall be insured against losses arising by reason of any lawful advances; (iii) a majority of a quorum of the disinterested Trustees who are not a party to the proceeding, or an independent legal counsel in a written opinion, shall have determined, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is reason to believe that the Covered Person ultimately will be found entitled to indemnification; or (iv) as otherwise permitted by the 1940 Act.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Duration and Termination of Trust.

(a) Unless terminated as provided herein, the Trust shall continue without limitation of time. The Trust may be terminated at any time by the Trustees by written notice to the Shareholders. Any Portfolio or Class of Shares thereof may be terminated at any time by vote of a majority of the Shares of such Portfolio or Class entitled to vote or by the Trustees by written notice to the Shareholders of such Portfolio or Class. Any action to dissolve the Trust shall be deemed also to be an action to dissolve each Portfolio and each Class thereof and any action to dissolve a Portfolio shall be deemed also to be an action to terminate each Class thereof.

(b) Upon the requisite action by the Trustees to terminate the Trust or any one or more Portfolios or Classes of Shares thereof, after paying or otherwise providing for all charges, taxes, expenses, and liabilities, whether due or accrued or anticipated, of the Trust or of the particular Portfolio or any Class thereof as may be determined by the Trustees, the Trust shall in accordance with such procedures as the Trustees consider appropriate reduce the remaining assets of the Trust or of the affected Portfolio or Class to distributable form in cash or Shares (if any Portfolio remain) or other securities, or any combination thereof, and distribute the proceeds to the Shareholders of the Portfolios or Classes involved, ratably according to the total net asset value of Shares of such Portfolios or Classes held by each affected Shareholder on the date of distribution. Thereupon, the Trust or any affected Portfolio or Class shall terminate and the Trustees and the Trust shall be discharged of any and all further liabilities and duties relating thereto or arising therefrom, and the right, title, and interest of all parties with respect to the Trust or such Portfolio or Class shall be canceled and discharged.

(c) Upon termination of the Trust, following completion of winding up of its business, the Trustees shall cause a certificate of cancellation of the Trust's Certificate of Trust to be filed in accordance with Section 3810(d) of the Delaware General Corporation, which certificate of cancellation may be signed by any one Trustee.

Section 7.2 Reorganization. Notwithstanding anything else herein, the Trustees may, without Shareholder approval unless such approval is required by applicable law, (i) cause the Trust to convert into, merge, reorganize, or consolidate with or into one or more trusts, partnerships, limited liability companies, associations, corporations or other business entities (or a series of any of the foregoing to the extent permitted by law) (including trusts, partnerships, associations, corporations or other business entities created by the Trustees to accomplish such conversion, merger or consolidation), or with or into any separate portfolio or portfolios of any thereof, so long as the surviving or resulting entity is a management investment company under the 1940 Act, or is a series thereof, that is formed, organized, or existing under the laws of the United States or of a state, commonwealth, or possession of the United States, (ii) cause any one or more Portfolios of the Trust to convert, merge or consolidate with or into any one or more of the other Portfolios of the Trust, or one or more trusts (or series thereof), partnerships, associations, corporations, (iii) cause any one or more Portfolios of the Trust to convert from a Portfolio that is not an ETF to a Portfolio that is an ETF or from a Portfolio that is an ETF to a Portfolio that is not an ETF, (iv) cause the Shares to be exchanged under or pursuant to any state or federal statute, (v) cause a sale of all, or substantially all, assets of the Trust or any one or more of its Portfolios, or (vi) cause the Trust to incorporate under the laws of any jurisdiction. Any agreement of merger, reorganization, consolidation, exchange or conversion, certificate of merger, certificate of conversion, or other applicable certificate may be signed by a majority of the Trustees or an authorized officer of the Trust and facsimile signatures conveyed by electronic or telecommunication means shall be valid.

Section 7.3 Amendments. This Trust Agreement may be restated and/or amended at any time by an instrument in writing signed, or by resolution approved at a duly constituted meeting, by a majority of the Trustees then holding office. Any such restatement and/or amendment hereto shall be effective immediately upon execution and approval or adoption of such resolution(s), subject to satisfaction of any additional requirements provided for in this Trust Agreement and by the 1940 Act. The Certificate of Trust of the Trust may be restated and/or amended by a similar procedure, and any such restatement and/or amendment shall be effective immediately upon filing with the Office of the Secretary of State of the State of Delaware or upon such future date as may be stated therein. No amendment shall impair the limitations on personal liability of any Shareholder, Trustee, Series Trustee, officer, employee, or agent of the Trust or permit assessments upon Shareholders.

Section 7.4 Filing of Copies. References: Headings. The original or a copy of this instrument and of each restatement or amendment hereto shall be kept at the office of the Trust where it may be inspected by any Shareholder. Anyone dealing with the Trust may rely on a certificate by an officer of the Trust as to whether or not any such restatements or amendments have been made, as to the identities of the Trustees, Series Trustees and officers, and as to any matters in connection with the Trust hereunder; and, with the same effect as if it were the original, may rely on a copy certified by an officer of the Trust to be a copy of this instrument, and all expressions like "herein," "hereof and "hereunder" shall be deemed to refer to this

instrument as a whole as the same may be amended or affected by any such restatements or amendments. Headings are placed herein for convenience of reference only and shall not be taken as a part hereof or control or affect the meaning, construction or effect of this instrument. This instrument may be executed in any number of counterparts, each of which shall be deemed an original.

Section 7.5 Applicable Law. This Trust Agreement is created under and is to be governed by and construed and administered according to the laws of the State of Delaware. The Trust shall be of the type referred to in Section 3801 of the Delaware Statutory Trust Act and of the type commonly called a statutory trust, and without limiting the provisions hereof, the Trust may exercise all powers which ·are ordinarily exercised by such a trust.

Section 7.6 Resident Agent. Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of Newcastle, Delaware was designated as the initial resident agent of the Trust in Delaware.

IN WITNESS WHEREOF, the Trustees named below do hereby make and enter into this Amended and Restated Agreement and Declaration of Trust effective as of December 20, 2021.

____
John C. Chrystal

____
Brian S. Ferrie

____
Christopher E. Kashmerick

____
Wan-Chong Kung

____
Harry E. Resis

EXHIBIT B

Execution Copy

DISTRIBUTION AGREEMENT

THIS AGREEMENT is made and entered into as of September 11, 2014, by and between the **TRUST FOR ADVISED PORTFOLIOS**, a Delaware statutory trust (the "Trust") on behalf of its series, and **QUASAR DISTRIBUTORS, LLC**, a Delaware limited liability company (the "Distributor"). **INFINITY Q CAPITAL MANAGEMENT, LLC,** the ("Advisor") **is a party hereto with respect to Sections 3 F. and 6 only.**

WHEREAS, the Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"), as an open-end management investment company, and is authorized to issue shares of beneficial interest ("Shares") in separate series, with each such series representing interests in a separate portfolio of securities and other assets;

WHEREAS, the Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and is a member of the Financial Industry Regulatory Authority ("FINRA");

WHEREAS, the Trust desires to retain the Distributor as principal underwriter in connection with the offer and sale of the Shares of each series of the Trust listed on **Exhibit A** hereto (as amended from time to time) (each a "Fund" and collectively, the "Funds"); and

WHEREAS, this Agreement has been approved by a vote of the Trust's board of trustees ("Board of Trustees" or the "Board"), including its disinterested trustees voting separately, in conformity with Section 15(c) of the 1940 Act.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Appointment of Quasar as Distributor

The Trust hereby appoints the Distributor as its agent for the sale and distribution of Shares of the Fund in jurisdictions wherein the Shares may be legally offered for sale, on the terms and conditions set forth in this Agreement, and the Distributor hereby accepts such appointment and agrees to perform the services and duties set forth in this Agreement. The services and duties of the Distributor shall be confined to those matters expressly set forth herein, and no implied duties are assumed by or may be asserted against the Distributor hereunder.

2. Services and Duties of the Distributor

A. The Distributor agrees to sell Shares on a best efforts basis as agent for the Trust upon the terms and at the current offering price (plus sales charge, if any) described in the Prospectus. As used in this Agreement, the term "Prospectus" shall mean the current prospectus, including the statement of additional information, as both may be amended or supplemented, relating to a Fund and included in the currently effective registration statement (the "Registration Statement") of the Trust filed under the Securities Act of 1933, as amended (the "1933 Act") and the 1940 Act. The Trust shall in all cases receive the net asset

value per Share on all sales. If a sales charge is in effect, the Distributor shall remit the sales charge (or portion thereof) to broker-dealers who have sold Shares, as described in Section 2(G), below.

B. During the continuous public offering of Shares, the Distributor will hold itself available to receive orders, satisfactory to the Distributor, for the purchase of Shares and will accept such orders on behalf of the Trust. Such purchase orders shall be deemed effective at the time and in the manner set forth in the Prospectus.

C. The Distributor, with the operational assistance of the Trust's transfer agent, shall make Shares available for sale and redemption through the National Securities Clearing Corporation's Fund/SERV System.

D. The Distributor acknowledges and agrees that it is not authorized to provide any information or make any representations other than as contained in the Prospectus and any sales literature specifically approved by the Trust.

E. The Distributor agrees to cooperate with the Trust or its agent in the development of all proposed advertisements and sales literature ("Communications with the Public") relating to the Fund. The Distributor agrees to review all proposed Communications with the Public for compliance with applicable laws and regulations, and shall file with appropriate regulators those Communications with the Public it believes are in compliance with such laws and regulations. The Distributor agrees to furnish to the Trust any comments provided by regulators with respect to such materials and to use its best efforts to obtain the approval of the regulators to such materials.

F. The Distributor, at its sole discretion, may repurchase Shares offered for sale by shareholders of the Fund. Repurchase of Shares by the Distributor shall be at the price determined in accordance with, and in the manner set forth in, the Prospectus. At the end of each business day, the Distributor shall notify the Trust and its transfer agent, by any appropriate means, of the orders for repurchase of Shares received by the Distributor since the last notification, the amount to be paid for such Shares and the identity of the shareholders offering Shares for repurchase. The Trust reserves the right to suspend such repurchase right upon written notice to the Distributor. The Distributor further agrees to act as agent for the Trust to receive and transmit promptly to the Trust's transfer agent, shareholder requests for redemption of Shares.

G. The Distributor may, in its discretion, enter into agreements with such qualified broker-dealers as it may select, in order that such broker-dealers also may sell Shares of the Fund. The form of any dealer agreement shall be approved by the Trust. To the extent there is a sales charge in effect, the Distributor shall pay the applicable sales charge (or portion thereof), or allow a discount, to the selling broker-dealer, as described in the Prospectus.

H. The Distributor shall devote its best efforts to effect sales of Shares of the Fund but shall not be obligated to sell any certain number of Shares.

I. The Distributor shall prepare reports for the Board regarding its activities under this Agreement as from time to time shall be reasonably requested by the Board, including reports regarding the use of any 12b-1 payments received by the Distributor.

J. The Distributor agrees to advise the Trust promptly in writing of the initiation of any proceedings against it by the SEC or its staff, FINRA or any state regulatory authority.

K. The Distributor shall monitor amounts paid under Rule 12b-1 plans and pursuant to sales loads to ensure compliance with applicable FINRA rules.

3. Representations and Covenants of the Trust

A. The Trust hereby represents and warrants to the Distributor, which representations and warranties shall be deemed to be continuing throughout the term of this Agreement, that:

(1) It is duly organized and existing under the laws of the jurisdiction of its organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform its obligations hereunder;

(2) This Agreement has been duly authorized, executed and delivered by the Trust in accordance with all requisite action and constitutes a valid and legally binding obligation of the Trust, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and secured parties;

(3) It is conducting its business in compliance in all material respects with all applicable laws and regulations, both state and federal, and has obtained all regulatory approvals necessary to carry on its business as now conducted; there is no statute, rule, regulation, order or judgment binding on it and no provision of its charter, bylaws or any contract binding it or affecting its property which would prohibit its execution or performance of this Agreement;

(4) All Shares to be sold by it, including those offered under this Agreement, are validly authorized and, when issued in accordance with the description in the Prospectus, will be fully paid and nonassessable;

(5) It has delivered or made available to the Distributor copies of (i) the Trust's Trust Instrument and Bylaws, (ii) the Trust's Registration Statement and all amendments thereto filed with the U.S. Securities and Exchange Commission ("SEC") pursuant to the Securities Act of 1933, as

amended ("Securities Act"), or the 1940 Act ("Registration Statement"), (iii) the current prospectuses and statements of additional information of each Fund and Class thereof (collectively, as currently in effect and as amended or supplemented, the "Prospectus"), (iv) each current plan of distribution or similar document adopted by the Trust under Rule 12b-1 under the 1940 Act ("Plan") and each current shareholder service plan or similar document adopted by the Trust ("Service Plan"); and (iv) all procedures adopted by the Trust with respect to the Funds, and shall promptly furnish the Distributor with all amendments of or supplements to the foregoing. The Trust shall deliver to the Distributor a certified copy of the resolution of the Board appointing the Distributor and authorizing the execution and delivery of this Agreement.

(6) The Registration Statement, and Prospectus included therein, have been prepared in conformity with the requirements of the 1933 Act and the 1940 Act and the rules and regulations thereunder; and

(7) The Registration Statement (at the time of its effectiveness) and any advertisements and sales literature prepared by the Trust or its agent (excluding statements relating to the Distributor and the services it provides that are based upon written information furnished by the Distributor expressly for inclusion therein) shall not contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that all statements or information furnished to the Distributor pursuant to this Agreement shall be true and correct in all material respects.

B. The Trust, or its agent, shall take or cause to be taken, all necessary action to register Shares of the Fund under the 1933 Act, qualify such shares for sale in such states as the Trust and the Distributor shall approve, and maintain an effective Registration Statement for such Shares in order to permit the sale of Shares as herein contemplated. The Trust authorizes the Distributor to use the Prospectus, in the form furnished to the Distributor from time to time, in connection with the sale of Shares.

C. The Trust agrees to advise the Distributor promptly in writing:

(i) of any material correspondence or other communication by the Securities and Exchange Commission (the "SEC") or its staff relating to the Fund, including requests by the SEC for amendments to the Registration Statement or Prospectus;

(ii) in the event of the issuance by the SEC of any stop-order suspending the effectiveness of the Registration Statement then in effect or the initiation of any proceeding for that purpose;

(iii) of the happening of any event which makes untrue any statement of a material fact made in the Prospectus or which requires the making of a change in such Prospectus in order to make the statements therein not misleading;

(iv) of all actions taken by the SEC with respect to any amendments to any Registration Statement or Prospectus, which may from time to time be filed with the SEC; and

(v) in the event that it determines to suspend the sale of Shares at any time in response to conditions in the securities markets or otherwise, or in the event that it determines to suspend the redemption of Shares at any time as permitted by the 1940 Act or the rules of the SEC, including any and all applicable interpretations of such by the staff of the SEC.

D. The Trust shall notify the Distributor in writing of the states in which the Shares may be sold and shall notify the Distributor in writing of any changes to such information.

E. The Trust agrees to file from time to time such amendments to its Registration Statement and Prospectus as may be necessary in order that its Registration Statement and Prospectus will not contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

F. The Trust shall fully cooperate in the efforts of the Distributor to sell and arrange for the sale of Shares and shall make available to the Distributor a statement of each computation of net asset value. In addition, the Trust shall keep the Distributor fully informed of its affairs and shall provide to the Distributor, from time to time, copies of all information, financial statements and other papers that the Distributor may reasonably request for use in connection with the distribution of Shares, including without limitation, certified copies of any financial statements prepared for the Trust by its independent public accountants and such reasonable number of copies of the Prospectus and annual and interim reports to shareholders as the Distributor may request. The Trust shall forward a copy of any SEC filings, including the Registration Statement, to the Distributor within one business day of any such filings. Each of the Trust and the Advisor represent that it will not use or authorize the use of any advertising or sales material unless and until such materials have been approved and authorized for use by the Distributor. Nothing in this Agreement shall require the sharing or provision of materials protected by privilege or limitation of disclosure, including any applicable attorney-client privilege or trade secret materials.

G. The Trust has reviewed and is familiar with the provisions of FINRA Rule 2830(k) prohibiting directed brokerage. In addition, the Trust agrees not to enter into any agreement (whether orally or in writing) under which the Trust directs or is expected to direct its brokerage transactions (or any commission, markup or other payment from such transactions) to a broker or dealer for the promotion or

sale of Fund shares or the shares of any other investment company. In the event the Trust fails to comply with the provisions of FINRA Rule 2830(k), the Trust shall promptly notify the Distributor.

4. Additional Representations and Covenants of the Distributor

The Distributor hereby represents, warrants and covenants to the Trust, which representations, warranties and covenants shall be deemed to be continuing throughout the term of this Agreement, that:

(1) It is duly organized and existing under the laws of the jurisdiction of its organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform its obligations hereunder;

(2) This Agreement has been duly authorized, executed and delivered by the Distributor in accordance with all requisite action and constitutes a valid and legally binding obligation of the Distributor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and secured parties;

(3) It is conducting its business in compliance in all material respects with all applicable laws and regulations, both state and federal, and has obtained all regulatory approvals necessary to carry on its business as now conducted; there is no statute, rule, regulation, order or judgment binding on it and no provision of its charter, bylaws or any contract binding it or affecting its property which would prohibit its execution or performance of this Agreement;

(4) It is registered as a broker-dealer under the 1934 Act and is a member in good standing of FINRA;

(5) It: (i) has adopted an anti-money laundering compliance program ("AML Program") that satisfies the requirements of all applicable laws and regulations; (ii) undertakes to carry out its AML Program to the best of its ability; (iii) will promptly notify the Trust and the Advisor if an inspection by the appropriate regulatory authorities of its AML Program identifies any material deficiency; and (vi) will promptly remedy any material deficiency of which it learns; and

(6) In connection with all matters relating to this Agreement, it will comply with the requirements of the 1933 Act, the 1934 Act, the 1940 Act, the regulations of FINRA and all other applicable federal or state laws and regulations.

5. Standard of Care

A. The Distributor shall use its best judgment and reasonable efforts in rendering services to the Trust under this Agreement but shall be under no duty to take any action except as specifically set forth herein or as may be specifically agreed to by the Distributor in writing. The Distributor shall not be liable to the Trust or any

of the Trust's shareholders for any error of judgment or mistake of law, for any loss arising out of any investment, or for any action or inaction of the Distributor in the absence of bad faith or willful misfeasance in the performance of the Distributor's duties or obligations under this Agreement or by reason of the Distributor's reckless disregard of its duties and obligations under this Agreement

B. The Distributor shall not be liable for any action taken or failure to act in good faith reliance upon:

(i) the advice of the Trust or of counsel, who may be counsel to the Trust or counsel to the Distributor;

(ii) any oral instruction which it receives and which it reasonably believes in good faith was transmitted by the person or persons authorized by the Board to give such oral instruction (the Distributor shall have no duty or obligation to make any inquiry or effort of certification of such oral instruction);

(iii) any written instruction or certified copy of any resolution of the Board, and the Distributor may rely upon the genuineness of any such document or copy thereof reasonably believed in good faith by the Distributor to have been validly executed; or

(iv) any signature, instruction, request, letter of transmittal, certificate, opinion of counsel, statement, instrument, report, notice, consent, order, or other document reasonably believed in good faith by the Distributor to be genuine and to have been signed or presented by the Trust or other proper party or parties; and the Distributor shall not be under any duty or obligation to inquire into the validity or invalidity or authority or lack thereof of any statement, oral or written instruction, resolution, signature, request, letter of transmittal, certificate, opinion of counsel, instrument, report, notice, consent, order, or any other document or instrument which the Distributor reasonably believes in good faith to be genuine.

C. The Distributor shall not be responsible or liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control including, without limitation, acts of civil or military authority, national emergencies, labor difficulties, fire, mechanical breakdowns, flood or catastrophe, epidemic, acts of God, insurrection, war, riots or failure of the mails, transportation, communication or power supply.

6. Compensation

The Distributor shall be compensated for providing the services set forth in this Agreement in accordance with the fee schedule set forth on **Exhibit B** hereto (as amended from

time to time). The Distributor shall also be compensated for such out-of-pocket expenses (e.g., telecommunication charges, postage and delivery charges, and reproduction charges) as are reasonably incurred by the Distributor in performing its duties hereunder. The Trust shall pay all such fees and reimbursable expenses within 30 calendar days following receipt of the billing notice, except for any fee or expense subject to a good faith dispute. The Trust shall notify the Distributor in writing within 30 calendar days following receipt of each invoice if the Trust is disputing any amounts in good faith. The Trust shall pay such disputed amounts within 10 calendar days of the day on which the parties agree to the amount to be paid. With the exception of any fee or expense the Trust is disputing in good faith as set forth above, unpaid invoices shall accrue a finance charge of 1½% per month after the due date.

Notwithstanding anything to the contrary, amounts owed by the Trust to the Distributor shall only be paid out of the assets and property of the particular Fund involved. Such fees and expenses shall be paid to Distributor by the Trust from Rule 12b-1 fees payable by the appropriate Fund or, if the Fund does not have a Rule 12b-1 plan, or if Rule 12b-1 fees are not sufficient to pay such fees and expenses, or if the Rule 12b-1 plan is discontinued, or if the Advisor otherwise determines that Rule 12b-1 fees shall not, in whole or in part, be used to pay Distributor, the Advisor shall be responsible for the payment of the amount of such fees and expenses not covered by Rule 12b-1 payments.

7. Expenses

A. The Trust shall bear all costs and expenses in connection with the registration of its Shares with the SEC and its related compliance with state securities laws, as well as all costs and expenses in connection with the offering of the Shares and communications with shareholders, including but not limited to: (i) fees and disbursements of its counsel and independent public accountants; (ii) costs and expenses of the preparation, filing, printing and mailing of Registration Statements and Prospectuses, as well as related advertising and sales literature; (iii) to the extent that the costs and expenses are not borne or reimbursed by an Advisor, costs and expenses of the preparation, printing and mailing of annual and interim reports, proxy materials and other communications to shareholders; and (iv) fees required in connection with the offer and sale of Shares in such jurisdictions as shall be selected by the Trust pursuant to Section 3(D) hereof.

B. The Distributor shall bear the expenses of registration or qualification of the Distributor as a dealer or broker under federal or state laws and the expenses of continuing such registration or qualification. The Distributor does not assume responsibility for any expenses not expressly assumed hereunder.

8. Indemnification

A. The Trust shall indemnify, defend and hold the Distributor and each of its managers, officers, employees, representatives and any person who controls the Distributor within the meaning of Section 15 of the 1933 Act (collectively, the "Distributor Indemnitees"), free and harmless from and against any and all claims, demands, losses, expenses and liabilities of any and every nature

(including reasonable attorneys' fees) (collectively, "Losses") that the Distributor Indemnitees may sustain or incur or that may be asserted against a Distributor Indemnitee by any person (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any Prospectus, or in any annual or interim report to shareholders, or in any advertisements or sales literature prepared by the Trust or its agent, or (ii) arising out of or based upon any omission, or alleged omission, to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) based upon the Trust's refusal or failure to comply with the terms of this Agreement or from its bad faith, negligence, or willful misconduct in the performance of its duties under this Agreement; provided, however, that the Trust's obligation to indemnify the Distributor Indemnitees shall not be deemed to cover any Losses arising out of any untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, Prospectus, annual or interim report, or any advertisement or sales literature in reliance upon and in conformity with written information relating to the Distributor and furnished to the Trust or its counsel by the Distributor for the purpose of, and used in, the preparation thereof. The Trust's agreement to indemnify the Distributor Indemnitees is expressly conditioned upon the Trust being notified of such action or claim of loss brought against the Distributor Indemnitees within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Distributor Indemnitees, unless the failure to give notice does not prejudice the Trust; provided, that the failure so to notify the Trust of any such action shall not relieve the Trust from any liability which the Trust may have to the person against whom such action is brought by reason of any such untrue, or alleged untrue, statement or omission, or alleged omission, otherwise than on account of the Trust's indemnity agreement contained in this Section 8(A).

B. The Trust shall be entitled to participate at its own expense in the defense, or if it so elects, to assume the defense of any suit brought to enforce any such Losses, but if the Trust elects to assume the defense, such defense shall be conducted by counsel chosen by the Trust and approved by the Distributor, which approval shall not be unreasonably withheld. In the event the Trust elects to assume the defense of any such suit and retain such counsel, the Distributor Indemnitees in such suit shall bear the fees and expenses of any additional counsel retained by them. If the Trust does not elect to assume the defense of any such suit, or in case the Distributor does not, in the exercise of reasonable judgment, approve of counsel chosen by the Trust, or if under prevailing law or legal codes of ethics, the same counsel cannot effectively represent the interests of both the Trust and the Distributor Indemnitees, the Trust will reimburse the Distributor Indemnitees for the reasonable fees and expenses of any counsel retained by them. The Trust's indemnification agreement contained in Sections 8(A) and 8(B) herein shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Distributor Indemnitees and shall survive the delivery of any Shares and the termination of this Agreement. This agreement of indemnity will inure exclusively to the benefit of the Distributor Indemnitees and

their successors. The Trust agrees promptly to notify the Distributor of the commencement of any litigation or proceedings against the Trust or any of its officers or trustees in connection with the offer and sale of any of the Shares.

C. The Trust shall advance attorneys' fees and other expenses incurred by any Distributor Indemnitee in defending any claim, demand, action or suit which is the subject of a claim for indemnification pursuant to this Section 8 to the maximum extent permissible under applicable law.

D. The Distributor shall indemnify, defend and hold the Trust and each of its trustees, officers, employees, representatives and any person who controls the Trust within the meaning of Section 15 of the 1933 Act (collectively, the "Trust Indemnitees"), free and harmless from and against any and all Losses that the Trust Indemnitees may sustain or incur or that may be asserted against a Trust Indemnitee by any person (i) arising out of or based upon any untrue or alleged untrue statement of a material fact contained in the Registration Statement or any Prospectus, or in any annual or interim report to shareholders, or in any advertisements or sales literature prepared by the Distributor, or (ii) arising out of or based upon any omission, or alleged omission, to state therein a material fact required to be stated therein or necessary to make the statement not misleading, or (iii) based upon the Distributor's refusal or failure to comply with the terms of this Agreement or from its bad faith, negligence, or willful misconduct in the performance of its duties under this Agreement; provided, however, that with respect to clauses (i) and (ii), above, the Distributor's obligation to indemnify the Trust Indemnitees shall only be deemed to cover Losses arising out of any untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, Prospectus, annual or interim report, or any advertisement or sales literature in reliance upon and in conformity with written information relating to the Distributor and furnished to the Trust or its counsel by the Distributor for the purpose of, and used in, the preparation thereof. The Distributor's agreement to indemnify the Trust Indemnitees is expressly conditioned upon the Distributor being notified of any action or claim of loss brought against the Trust Indemnitees within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Trust Indemnitees, unless the failure to give notice does not prejudice the Distributor; provided, that the failure so to notify the Distributor of any such action shall not relieve the Distributor from any liability which the Distributor may have to the person against whom such action is brought by reason of any such untrue, or alleged untrue, statement or omission, otherwise than on account of the Distributor's indemnity agreement contained in this Section 8(D).

E. The Distributor shall be entitled to participate at its own expense in the defense, or if it so elects, to assume the defense of any suit brought to enforce any such Losses, but if the Distributor elects to assume the defense, such defense shall be conducted by counsel chosen by the Distributor and approved by the Trust, which approval shall not be unreasonably withheld. In the event the Distributor elects to assume the defense of any such suit and retain such counsel, the Trust

Indemnitees in such suit shall bear the fees and expenses of any additional counsel retained by them. If the Distributor does not elect to assume the defense of any such suit, or in case the Trust does not, in the exercise of reasonable judgment, approve of counsel chosen by the Distributor, or if under prevailing law or legal codes of ethics, the same counsel cannot effectively represent the interests of both the Trust Indemnitees and the Distributor, the Distributor will reimburse the Trust Indemnitees for the reasonable fees and expenses of any counsel retained by them. The Distributor's indemnification agreement contained in Sections 8(D) and 8(E) herein shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Trust Indemnitees and shall survive the delivery of any Shares and the termination of this Agreement. This agreement of indemnity will inure exclusively to the benefit of the Trust Indemnitees and their successors. The Distributor agrees promptly to notify the Trust of the commencement of any litigation or proceedings against the Distributor or any of its officers or directors in connection with the offer and sale of any of the Shares.

F. The Distributor shall advance attorneys' fees and other expenses incurred by any Trust Indemnitee in defending any claim, demand, action or suit which is the subject of a claim for indemnification pursuant to this Section 8 to the maximum extent permissible under applicable law.

G. No party to this Agreement shall be liable to the other parties for consequential, special or punitive damages under any provision of this Agreement.

H. No person shall be obligated to provide indemnification under this Section 8 if such indemnification would be impermissible under the 1940 Act, the 1933 Act, the 1934 Act or the rules of FINRA; provided, however, in such event indemnification shall be provided under this Section 8 to the maximum extent so permissible.

9. Proprietary and Confidential Information

The Distributor agrees on behalf of itself and its managers, officers, and employees to treat confidentially and as proprietary information of the Trust, all records and other information relative to the Trust and prior, present or potential shareholders of the Trust (and shareholder clients of said shareholders), and not to use such records and information for any purpose other than the performance of its responsibilities and duties hereunder, except (i) after prior notification to and approval in writing by the Trust, which approval shall not be unreasonably withheld and may not be withheld where the Distributor may be exposed to civil or criminal contempt proceedings for failure to comply, (ii) when requested to divulge such information by duly constituted authorities, or (iii) when so requested by the Trust. Records and other information which have become known to the public through no wrongful act of the Distributor or any of its employees, agents or representatives, and information that was already in the possession of the Distributor prior to receipt thereof from the Trust or its agent, shall not be subject to this paragraph.

Further, the Distributor will adhere to the privacy policies adopted by the Trust pursuant to Title V of the Gramm-Leach-Bliley Act, as may be modified from time to time. In this regard, the Distributor shall have in place and maintain physical, electronic and procedural safeguards reasonably designed to protect the security, confidentiality and integrity of, and to prevent unauthorized access to or use of, records and information relating to the Trust and its shareholders.

10. Compliance with Laws

The Trust has and retains primary responsibility for all compliance matters relating to the Fund, including but not limited to compliance with the 1940 Act, the Internal Revenue Code of 1986, the Sarbanes-Oxley Act of 2002, the USA Patriot Act of 2001 and the policies and limitations of the Fund relating to its portfolio investments as set forth in its Prospectus and statement of additional information. The Distributor's services hereunder shall not relieve the Trust of its responsibilities for assuring such compliance or the Board of Trustee's oversight responsibility with respect thereto.

11. Term of Agreement; Amendment; Assignment

A. This Agreement shall become effective with respect to each Fund listed on Exhibit A hereof as of the date such Fund is approved by the Board of Trustees of the Trust and, with respect to each Fund not in existence on that date, on the date an amendment to Exhibit A to this Agreement relating to that Fund is approved by the Board of Trustees of the Trust. Unless sooner terminated as provided herein, this Agreement shall continue in effect for two years from the date hereof. Thereafter, if not terminated, this Agreement shall continue in effect automatically as to each Fund for successive one-year periods, provided such continuance is specifically approved at least annually by: (i) the Trust's Board, or (ii) the vote of a "majority of the outstanding voting securities" of a Fund, and provided that in either event, the continuance is also approved by a majority of the Trust's Board who are not "interested persons" of any party to this Agreement, by a vote cast in person at a meeting called for the purpose of voting on such approval.

B. Notwithstanding the foregoing, this Agreement may be terminated, without the payment of any penalty, with respect to a particular Fund: (i) through a failure to renew this Agreement at the end of a term, (ii) upon mutual consent of the parties, or (iii) upon not less than 60 days' written notice, by either the Trust upon the vote of a majority of the members of its Board who are not "interested persons" of the Trust and have no direct or indirect financial interest in the operation of this Agreement, or by vote of a "majority of the outstanding voting securities" of a Fund, or by the Distributor, or by the Advisor. The terms of this Agreement shall not be waived, altered, modified, amended or supplemented in any manner whatsoever except by a written instrument signed by the Distributor and the Trust. If required under the 1940 Act, any such amendment must be approved by the Trust's Board, including a majority of the Trust's Board who are not "interested persons" of any party to this Agreement, by a vote cast in person at a meeting for

the purpose of voting on such amendment. In the event that such amendment affects the Advisor, the written instrument shall also be signed by the Advisor. This Agreement will automatically terminate in the event of its "assignment."

C. As used in this Section, the terms "majority of the outstanding voting securities," "interested person," and "assignment" shall have the same meaning as such terms have in the 1940 Act.

D. Sections 8 and 9 shall survive termination of this Agreement.

12. Duties in the Event of Termination

In the event that, in connection with termination, a successor to any of the Distributor's duties or responsibilities hereunder is designated by the Trust by written notice to the Distributor, the Distributor will promptly, upon such termination and at the expense of the Trust, transfer to such successor all relevant books, records, correspondence, and other data established or maintained by the Distributor under this Agreement in a form reasonably acceptable to the Trust (if such form differs from the form in which the Distributor has maintained the same, the Trust shall pay any expenses associated with transferring the data to such form), and will cooperate in the transfer of such duties and responsibilities, including provision for assistance from the Distributor's personnel in the establishment of books, records, and other data by such successor. If no such successor is designated, then such books, records and other data shall be returned to the Trust.

13. Governing Law

This Agreement shall be construed in accordance with the laws of the State of Wisconsin, without regard to conflicts of law principles. To the extent that the applicable laws of the State of Wisconsin, or any of the provisions herein, conflict with the applicable provisions of the 1940 Act, the latter shall control, and nothing herein shall be construed in a manner inconsistent with the 1940 Act or any rule or order of the SEC thereunder.

14. No Agency Relationship

Nothing herein contained shall be deemed to authorize or empower either party to act as agent for the other party to this Agreement, or to conduct business in the name, or for the account, of the other party to this Agreement.

15. Services Not Exclusive

Nothing in this Agreement shall limit or restrict the Distributor from providing services to other parties that are similar or identical to some or all of the services provided hereunder.

16. Invalidity

Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In such case, the parties shall in good faith modify or substitute such provision consistent with the original intent of the parties.

17. Notices

Any notice required or permitted to be given by any party to the others shall be in writing and shall be deemed to have been given on the date delivered personally or by courier service, or three days after sent by registered or certified mail, postage prepaid, return receipt requested, or on the date sent and confirmed received by facsimile transmission to the other parties' respective addresses as set forth below:

Notice to the Distributor shall be sent to:

Quasar Distributors, LLC
Attn: President
615 East Michigan Street
Milwaukee, Wisconsin 53202

notice to the Trust shall be sent to:

U.S. Bancorp Fund Services, LLC
Attn: Trust for Advised Portfolios
615 E. Michigan Street, Fund Administration
Milwaukee, WI 53202

and notice to the Advisor shall be sent to:

Infinity Q Capital Management, LLC
888 7th Avenue Ste 3800
New York, NY 10106

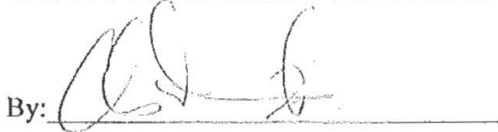
18. Multiple Originals

This Agreement may be executed on two or more counterparts, each of which when so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by a duly authorized officer on one or more counterparts as of the date first above written.

The parties hereby agree that the Distribution Services provided by Quasar Distributors, LLC will commence on or after September 11, 2014.

TRUST FOR ADVISED PORTFOLIOS

By: 

Name: Christopher E. Kashmerick

Title: President

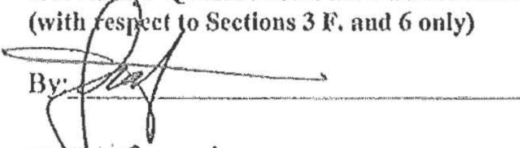
QUASAR DISTRIBUTORS, LLC

By:

Name: James R. Schoenike

Title: President

INFINITY Q CAPITAL MANAGEMENT, LLC
(with respect to Sections 3 F. and 6 only)

By: 

Name: Scott Lindell

Title: CRO

Exhibit A
to the
Distribution Agreement

Separate Series of Trust for Advised Portfolios

Name of Series
Infinity Q Diversified Alpha Fund

Exhibit B to the Distribution Agreement – Trust for Advised Portfolios

Quasar Distributors, LLC Regulatory Distribution Services Fee Schedule at September, 2014

<u>Regulatory Distribution Annual Services Per Fund*</u>
.5 basis point on average net assets over $100 million plus
Base annual fee:

- $12,000 /fund

Default sales loads and distributor concession, if applicable, are paid to Quasar.

<u>Standard Advertising Compliance Review</u>

- $125 per communication piece for the first 10 pages (minutes if audio or video); $10 /page (minute if audio or video) thereafter.
- $125 FINRA filing fee per communication piece for the first 10 pages (minutes if audio or video); $10 /page (minute if audio or video) thereafter. FINRA filing fee subject to change. (FINRA filing fee may not apply to all communication pieces.)

<u>Expedited Advertising Compliance Review</u>

- $600 for the first 10 pages (minutes if audio or video); $25 /page (minute if audio or video) thereafter, 24 hour initial turnaround.
- $600 FINRA filing fee per communication piece for the first 10 pages (minutes if audio or video); $50 /page (minute if audio or video) thereafter. FINRA filing fee subject to change. (FINRA filing fee may not apply to all communication pieces.)

<u>Licensing of Investment Advisor's Staff (if desired)</u>

- $2,800 /year per registered representative
- Quasar sponsors the following licenses: Series 6, 7, 24, 26, 27, 63, 66
- $3,000 /FINRA designated branch location
- All associated FINRA and state fees for registered representatives, including license and renewal fees

<u>Fund Fact Sheets</u>

- Design - $1,000 /fact sheet, includes first production
- Production - $500 /fact sheet per production period
- All printing costs are out-of-pocket expenses in addition to the design and production fees
- Web sites, third-party data provider costs, brochures, and other sales support materials – Project priced via Quasar proposal

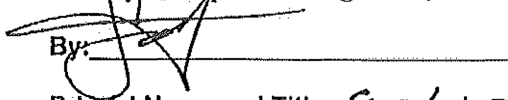
<u>Out-of-Pocket Expenses</u>
Reasonable out-of-pocket expenses incurred by the Distributor in connection with activities primarily intended to result in the sale of shares, including, but not limited to:

- Typesetting, printing and distribution of prospectuses and shareholder reports
- Production, printing, distribution, and placement of advertising, sales literature, and materials
- Engagement of designers, free-lance writers, and public relations firms
- Postage, overnight delivery charges
- FINRA registration fees (including late U5 charge if applicable)
- Record retention (including RR email correspondence if applicable)
- Travel, lodging, and meals

*Subject to annual CPI increase, Milwaukee MSA.
Fees are calculated pro rata and billed monthly.

Advisor's Signature below acknowledges approval of the fee schedule on this Exhibit B.

Infinity Q Capital Management, LLC



By: ______________________

Printed Name and Title: Scott Lindell CEO Date: 9/11/14