

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

TRUST FOR ADVISED PORTFOLIOS, ON
BEHALF OF THE INFINITY Q DIVERSIFIED
ALPHA FUND,

Plaintiff,

-against-

U.S. BANCORP FUND SERVICES, LLC;
EISNERAMPER LLP,

Defendants.

Index No.: /2024

COMPLAINT

The Trust for Advised Portfolios (“TAP” or the “Trust”), for itself and on behalf of the Infinity Q Diversified Alpha Fund (the “Fund”), by and through its undersigned counsel, brings this action against defendants U.S. Bancorp Fund Services, LLC (“USBFS”) and EisnerAmper LLP (“EisnerAmper” and, collectively with USBFS, “Defendants”), and alleges as follows:

NATURE OF THE ACTION

1. This is a breach-of-contract case against two service providers who completely abdicated their duties to their client. TAP hired USBFS to provide fund valuation, accounting, compliance, and other services to the Fund. TAP hired EisnerAmper to audit the Fund, including the valuation of the Fund’s portfolio, and to review its internal controls.

2. Unbeknownst to TAP and the Fund, James Velissaris, the Chief Investment Officer of the Fund’s third-party investment advisor, Infinity Q Capital Management LLC (“IQCM”), was engaged in a massive fraud. Velissaris was manipulating IQCM’s own calculation of the value of the Fund’s securities—which lacked readily available market values—in order to increase IQCM’s investment advisory fees and his own job stability. USBFS then blindly accepted those

valuations—in violation of its contractual duties to TAP and the Fund—and used them in financial reports, which EisnerAmper blessed by repeatedly issuing unqualified audit opinions that identified no material deficiencies. By June 30, 2020, an astounding 55% of the Fund’s net asset value (“NAV”), representing almost \$500 million, was entirely fictitious. Four months later, EisnerAmper once again gave the Fund a clean audit report that noted no material deficiencies and (falsely) represented to TAP that EisnerAmper had “evaluated the key factors and assumptions used to develop the fair value estimates” of the value of the Fund’s portfolio.

3. The fraud was not difficult for a competent auditor or fund administrator to detect. It largely depended on a single lie: That the valuations were not being generated or manipulated by IQCM, but instead were being produced by an “independent pricing service” operated by Bloomberg called “BVAL.” As Velissaris had told TAP and its investors: “We provide the term sheet, and [Bloomberg] created the pricing model. We have not had any input into [Bloomberg’s] models, and they independently provide the values.”

4. This was false. IQCM did not provide the term sheets to Bloomberg; Velissaris inputted the terms into BVAL himself. And while Bloomberg provided user-customizable model templates for valuing the Fund’s securities, it did not independently generate or supply the valuations; Velissaris did. Thus, contrary to his representations to TAP, Velissaris was able to change the inputted terms, select the model’s assumptions, and even manipulate the BVAL coding to achieve his preferred valuations. As Velissaris admitted when he ultimately pleaded guilty to securities fraud:

I told investors that I was using an independent Bloomberg system to value the fund’s over-the-counter derivatives. However, I was making manual adjustments in the system which increased the values of over-the-counter derivative positions that were reported.

Velissaris's claim that Bloomberg was "independently modeling" the values is like a financial analyst who had modeled a company's discounted cashflows in Excel claiming that Microsoft had "independently valued" that company at \$2 billion.

5. TAP hired USBFS and EisnerAmper to guard against the very fraud that Velissaris perpetrated. TAP's contracts with USBFS outsourced to them responsibility for the valuation, compliance, and financial reporting functions of the Fund, among other responsibilities. For example, USBFS was responsible for recommending and reviewing pricing sources, "determin[ing] the net asset value of the Fund," preparing financial reports in compliance with the law, and monitoring the Fund's compliance with the requirements of the Investment Company Act of 1940. And TAP's agreements with EisnerAmper required EisnerAmper to "plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether caused by error or fraud," including auditing the valuations of the Fund's securities.

6. USBFS and EisnerAmper would have detected the fraud in its early stages if they had conducted any reasonable inquiry into IQCM's valuation methods. If that had happened, TAP would have terminated IQCM and liquidated the Fund in an orderly fashion long before the over-valuation reached the point that it did. Instead, USBFS and EisnerAmper breached their contractual duties, turned a blind eye to numerous red flags, and repeatedly rubberstamped Velissaris's wildly inflated valuations, causing hundreds of millions of dollars in losses.

PARTIES

7. TAP is a Delaware statutory trust registered under the Investment Company Act of 1940 (the "1940 Act"). As a series trust, it is authorized to issue shares of beneficial interest in

separate series, with each such series representing interests in a separate portfolio of securities and other assets. The Fund was organized as a series of TAP in 2014.

8. Defendant USBFS is a Wisconsin limited liability company with its principal place of business in Milwaukee, Wisconsin. USBFS is registered to conduct business in New York. USBFS entered into contracts with TAP to serve as the Fund’s administrator, custodian, and fund accountant.

9. Defendant EisnerAmper is a New York limited liability partnership with its principal place of business located in New York, New York. EisnerAmper served as the Fund’s auditor for the years 2018, 2019, and 2020.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Defendants under CPLR §§ 301 and 302(a).

11. Venue in this County is proper under CPLR § 503, as at least one defendant, EisnerAmper, is a resident of New York County. Venue in this County is also proper under CPLR § 501, because EisnerAmper consented to venue of the courts in New York County in the written agreements that give rise to some of the claims in this action.

12. Venue is proper in the Commercial Division of this court under 22 NYCRR 202.70(a), because the monetary threshold is met, and 22 NYCRR 202.70(b), due to the nature of the claims alleged.

BACKGROUND

TAP, the Fund, and its Service Providers

13. TAP is a Delaware statutory trust that is registered with the United States Securities and Exchange Commission (“SEC”) under the 1940 Act as an open-end series investment

company. TAP consists of multiple “series” or funds, each of which is a separate investment portfolio with its own assets and liabilities. During the relevant period, TAP had a Board of Trustees consisting of three or more independent trustees and one USBFS-employed trustee.

14. In or about September 2014, TAP launched the Fund. At its inception, the Fund’s portfolio consisted primarily of cash and a variety of equity and over-the-counter (“OTC”) derivative positions—principally swaps. The Fund’s swaps were predominantly variance swaps, the value of which was tied to measures of volatility.

15. Unlike a hedge fund, in which the persons who operate the fund typically also act as investment advisors, TAP outsources asset management to third-party investment advisors, such as IQCM, which served as the Fund’s investment advisor. TAP hires other independent contractors, such as Defendants, to provide essential services to the Fund and to supervise and audit the work of the third-party investment advisors. The Fund itself has no employees. All of the Fund’s officers were supplied by USBFS, and employed and paid directly by USBFS, pursuant to contracts between TAP and USBFS, and USBFS fulfilled some of its contractual duties through a Valuation Committee that was comprised entirely of USBFS employees.

16. The relevant TAP-USBFS contracts include the Fund Administration Servicing Agreement and the Fund Accounting Servicing Agreement, both dated January 1, 2014. These contracts are attached as Exhibits A and B. Under these contracts, USBFS supplied the Fund’s officers and took responsibility for the Fund’s general management, regulatory compliance, SEC registration and reporting, financial reporting, and tax reporting. USBFS agreed to provide the Fund with portfolio accounting services and fund valuation services. USBFS also agreed to evaluate and assist the Fund’s independent auditor.

17. TAP's contracts with USBFS expressly provide that "USBFS shall exercise reasonable care in the performance of its duties," and require USBFS to "indemnify and hold the Trust harmless from and against any and all claims, demands, losses, expenses, and liabilities of any and every nature (including reasonable attorneys' fees) that the Trust may sustain or incur or that may be asserted against the Trust by any person arising out of any action taken or omitted to be taken by USBFS as a result of USBFS' refusal or failure to comply with the terms of this Agreement; or from its . . . negligence[.]"

18. Between 2018 and 2021, TAP paid USBFS nearly one million dollars in administration fees for the Fund alone. In addition, Quasar Distributors, LLC, which was U.S. Bancorp's wholly owned subsidiary until it was sold in 2020, separately earned significant commissions for selling interests in the Fund to investors across the industry.

19. From 2018 to 2021, EisnerAmper was the Fund's independent auditor. The 2018, 2019, and 2020 engagement letters between EisnerAmper and the Fund each stated as follows:

EisnerAmper is responsible for conducting our audit of the consolidated financial statements in accordance with the standards established by the Public Company Accounting Oversight Board (United States) ("PCAOB"). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether caused by error or fraud.

These engagement letters are attached as Exhibits C, D, and E.

20. TAP retained EisnerAmper after the Fund's former auditor, BBD, LLP, openly expressed discomfort with the valuations being provided by IQCM and was unable to issue a timely audit report in 2017 because it could not confirm the reasonableness of some of IQCM's valuations.

21. Between 2018 and 2021, TAP paid EisnerAmper at least \$240,000 in auditing fees.

22. IQCM was the Fund's third-party investment advisor. IQCM was affiliated with an entity named Wildcat Partner Holdings, LP, formerly Bonderman Family Limited Partnership ("Wildcat").

23. TAP retained IQCM to advise the Fund pursuant to an Investment Advisory Agreement dated September 23, 2014. The Investment Advisory Agreement was filed with the SEC and known to both Defendants. Investment Advisory Agreement § 4 expressly provided that IQCM was an independent third party and not an agent of TAP or the Fund:

INDEPENDENT CONTRACTOR. The Adviser shall, for all purposes herein, be deemed to be an independent contractor, and shall, unless otherwise expressly provided and authorized to do so, have no authority to act for or represent the Trust or any Fund in any way, or in any way be deemed an agent for the Trust or for any Fund. It is expressly understood and agreed that the services to be rendered by the Adviser to each Fund under the provisions of this Agreement are not to be deemed exclusive, and that the Adviser may give advice and take action with respect to other clients, including affiliates of the Adviser, that may be similar or different from that given to the Fund.

24. Neither TAP nor the Fund directed the time, place, or manner of IQCM's work. IQCM was a wholly distinct operation, with its own employees, offices, and expenses. IQCM simultaneously ran an entirely separate hedge fund. USBFS and EisnerAmper were both aware that IQCM was a third-party service provider for the Fund, that IQCM served as an independent contractor, and that IQCM had no authority over, or contractual relationship with, either of them.

25. James Velissaris was IQCM's founder, majority owner, and Chief Investment Officer. Velissaris indirectly owned 51% of IQCM; Wildcat owned 40%; and Scott Lindell, who was IQCM's Chief Operating Officer, Chief Risk Officer, and Chief Compliance Officer, owned the remaining 9%. Neither Velissaris nor anyone else affiliated with IQCM was an officer, director, or employee of TAP or the Fund.

The Valuation of the Fund's Swaps and the Determination of Net Asset Value

26. As a mutual fund governed by the 1940 Act, the Fund was required by law to calculate its NAV on a per-share basis each business day. A mutual fund's per-share NAV represents the total value of that fund's assets minus its liabilities, divided by the number of the fund's outstanding shares. For funds whose assets consist of highly liquid securities with a readily ascertainable market price (such as publicly traded equity securities), the fund must value its portfolio securities at market price when calculating the daily NAV. Securities with no readily available market value, such as the Fund's OTC derivative positions, must be priced at "fair value." TAP's valuation policies and procedures echoed the federal securities laws in requiring that securities without a readily available market value be priced at "fair value."

27. TAP delegated the task of determining the Fund's NAV to USBFS. The Fund Accounting Servicing Agreement required USBFS to "[d]etermine the net asset value of the Fund according to the accounting policies and procedures set forth in the Fund's current prospectus," and the Fund Administration Services Agreement required USBFS to prepare financial reports and monitor compliance.

28. USBFS, in turn, relied on IQCM to provide its own estimate of daily fair value pricing for each of the Fund's derivative positions. USBFS was then responsible for reviewing IQCM's valuations for compliance with TAP's policies and federal securities laws and ultimately determining the Fund's NAV. Fund Accounting Servicing Agreement § 2(E)(3) required USBFS to perform "its duties hereunder in compliance with all applicable laws and regulations[.]"

29. USBFS incorporated these IQCM-based NAVs into financial reports that USBFS provided to TAP's Board of Trustees, its shareholders, and the SEC.

30. In its capacity as fund administrator, USBFS had a duty to ensure that these financial reports—including the NAVs they reported—complied with federal securities laws and TAP’s policies and procedures. Fund Administration Servicing Agreement § 2(B)(1) required USBFS to monitor “compliance with the 1940 Act requirements” and “the policies and investment limitations as set forth in its prospectus,” to perform “its duties in compliance with all applicable laws and regulations,” and to monitor “applicable regulatory and operational service issues, and update the Board of Trustees periodically.”

31. EisnerAmper was responsible for auditing the Fund and its NAV at the end of each fiscal year. In each of 2018, 2019, and 2020, EisnerAmper issued an unqualified audit opinion, noted no material deficiencies, and issued a “clean” internal controls letter. In each of 2018, 2019, and 2020, EisnerAmper made an express representation to TAP’s board that EisnerAmper had “evaluated the key factors and assumptions used to develop the fair value estimate” and found no material issues.

Unbeknownst to TAP, IQCM Was Engaged in a Massive Fraud Designed to Inflate the Fund’s NAV and, as a Result, IQCM’s Investment Advisory Fees

32. Starting in or around 2017, and escalating through the COVID-19 pandemic, Velissaris dramatically and fraudulently inflated his valuations by hundreds of millions of dollars. TAP was not aware of Velissaris’s fraud.

33. Defendants blindly accepted Velissaris’s bogus calculations and reported the valuations to shareholders and TAP’s board. Velissaris’s fraudulent NAVs were used to calculate the investment advisory fees paid to IQCM and the redemptions paid to investors, causing the Fund to suffer enormous losses.

34. After Velissaris's fraud was revealed in early 2021, TAP's board retained Alvarez & Marsal, a third-party valuation expert, to do what Defendants should have been doing all along: Conduct an independent review of the valuations that Velissaris had provided to Defendants.

35. Alvarez & Marsal's analysis showed that the Fund's NAV had been inflated by almost \$500 million as of June 30, 2020, and that over 50% of the Fund's NAV had been fabricated:

Month End	IQ Reported Mutual Fund NAV	Recalculated Mutual Fund NAV	Difference	Percent Overvalued
3/31/2017	\$156,433,465	\$150,456,249	(\$5,977,216)	3.97%
6/30/2017	\$159,886,216	\$150,827,761	(\$9,058,455)	6.01%
9/30/2017	\$165,306,959	\$159,449,652	(\$5,857,307)	3.67%
12/31/2017	\$173,098,348	\$170,908,162	(\$2,190,187)	1.28%
3/31/2018	\$210,240,557	\$206,520,975	(\$3,719,582)	1.80%
6/30/2018	\$234,320,148	\$225,651,709	(\$8,668,439)	3.84%
9/30/2018	\$310,450,929	\$304,083,779	(\$6,367,150)	2.09%
12/31/2018	\$428,724,464	\$400,457,990	(\$28,266,474)	7.06%
3/31/2019	\$549,812,778	\$517,609,174	(\$32,203,604)	6.22%
6/30/2019	\$626,243,979	\$575,038,219	(\$51,205,759)	8.90%
9/30/2019	\$702,332,704	\$636,806,877	(\$65,525,827)	10.29%
12/31/2019	\$770,265,076	\$678,227,874	(\$92,037,201)	13.57%
3/31/2020	\$1,051,949,041	\$634,596,397	(\$417,352,644)	65.77%
6/30/2020	\$1,367,755,693	\$883,049,535	(\$484,706,158)	54.89%
9/30/2020	\$1,634,510,959	\$1,149,333,710	(\$485,177,249)	42.21%
12/31/2020	\$1,807,630,993	\$1,399,060,792	(\$408,570,201)	29.20%
2/18/2021	\$1,727,194,949	\$1,330,371,820	(\$396,823,128)	29.83%

36. Velissaris was only able to commit—and perpetuate—the valuation fraud because Defendants failed to conduct any reasonable inquiry as to how Velissaris modeled the values of the Fund's securities or the reasonableness of those valuations. In doing so, Defendants breached their contractual duties to TAP.

37. Defendants turned a blind eye to numerous red flags that should have put them on notice that Velissaris's valuations of the Fund's securities were wrong. For example, certain positions reported by USBFS to TAP, and subsequently audited by EisnerAmper, had mathematically impossible valuations. Certain identical positions held by both the Fund and

IQCM's separately advised hedge fund were assigned different valuations. Notably, USBFS was the administrator for both funds and EisnerAmper was the auditor for both funds.

38. From the inception of the Fund, TAP's board was concerned with the difficulties of fairly valuing the derivatives being traded by IQCM. Unlike stocks and bonds, variance swaps are bespoke instruments and not widely traded. Beginning in or around August 2016, Velissaris sought to allay these concerns by telling TAP's board, as well as its Valuation Committee and investors, that these securities were being independently valued by BVAL, a pricing service operated by Bloomberg. For example, Velissaris represented in 2016 that IQCM "provide[s] the term sheet, and [BVAL] created the pricing model. We have not had any input into [BVAL's] models, and they independently provide the values."

39. Velissaris's representations about BVAL's independence were false. BVAL does provide independent pricing for certain securities, like fixed-income securities. But BVAL also provides user-customizable templates for the valuation of derivatives, including swaps. The end user can change the inputs, settings, and coding of those templates. Modifying those variables can substantially change the resulting valuation.

40. Unbeknownst to TAP, Velissaris was the sole IQCM employee with access to input and edit the Fund's positions and templates in BVAL. Velissaris used those inputs, settings, and code modifications to generate the false valuations for the Fund's securities at issue. BVAL was never a third-party valuation service for the Fund's securities, and BVAL was not receiving term sheets and then modeling the Fund's positions independently.

41. USBFS failed to correct Velissaris's misstatements to TAP about the valuation process for the Fund's derivatives. USBFS never told TAP's board that there were any questions or concerns about the veracity of Velissaris's assertions about his use of BVAL or the valuation

process more generally. USBFS did not conduct any meaningful inquiry or due diligence into how BVAL worked, how Velissaris was using it to value the Fund's derivatives, or the internal controls over valuation at IQCM. Yet USBFS was ultimately responsible for overseeing the selection and use of pricing services, determining the Fund's NAV, preparing financial reports, monitoring compliance, and liaising between TAP's board and IQCM. USBFS abdicated its responsibilities to TAP and the Fund under the Fund Administration Servicing Agreement and the Fund Accounting Servicing Agreement.

42. EisnerAmper also breached its contractual obligations under its agreements with TAP. EisnerAmper not only failed to discover that over 50% of the Fund's NAV had been fabricated by one person—EisnerAmper itself made material and false representations to TAP about both the work EisnerAmper performed and how BVAL was being used in the valuation process.

The Fraud Is Uncovered and Velissaris Pleads Guilty to Securities Fraud

43. In May 2020, the SEC opened an investigation into IQCM's valuation practices.

44. On October 29, 2020, EisnerAmper issued its 2020 audit report, which again provided an unqualified audit opinion, noted no material deficiencies, and failed to identify any internal controls deficiencies. EisnerAmper again expressly represented to TAP's board that it had "evaluated the key factors and assumptions used to develop the fair value estimates" of the value of the Fund's positions and found no material issues.

45. Less than a month later, in or about November 2020, Velissaris gave a presentation to the SEC in which he admitted that he had the ability to, and did, alter the "volatility surface," one of the key assumptions in valuing the Fund's swaps, in BVAL.

46. In January 2021, Velissaris gave the same presentation to TAP's board. This was the first time TAP learned that Velissaris had the ability to alter inputs in the BVAL models and that Velissaris's representations that BVAL functioned as an independent third-party pricing service were lies.

47. On February 19, 2021, IQCM informed TAP that Velissaris had been making alterations to BVAL that affected the valuation of the Fund's portfolio securities, which IQCM could not conclude were reasonable.

48. On February 22, 2021, IQCM and TAP submitted a joint application to the SEC to suspend redemptions and to liquidate the Fund. In that application IQCM and TAP stated that:

On February 18, 2021, based on information learned by the [SEC] staff and shared with [IQCM], [IQCM] informed the Fund that [IQCM's] Chief Investment Officer had been adjusting certain parameters within the third-party pricing model that affected the valuation of the Swaps. On February 19, 2021, [IQCM] informed the Fund that at such time it was unable to conclude that these adjustments were reasonable, and, further, that it was unable to verify that the values it had previously determined for the Swaps were reflective of fair value. [IQCM] also informed the Fund that it would not be able to calculate a fair value for any of the Swaps in sufficient time to calculate an accurate NAV for at least several days. [IQCM] and the Fund immediately began the effort to value these Swap positions accurately to enable the Fund to calculate an NAV, which effort includes the retention of an independent valuation expert. However, [IQCM] and the Fund currently believe that establishing and verifying those alternative methods may take several days or weeks. [IQCM] and the Fund are also determining whether the fair values calculated for positions other than the Swaps are reliable, and the extent of the impact on historical valuations. As a result, the Fund was unable to calculate an NAV on February 19, 2021, and it is uncertain when the Fund will be able to calculate an NAV that would enable it to satisfy requests for redemptions of Fund shares.

49. The SEC approved the application and suspended redemptions that same day.

50. Thereafter, TAP liquidated the Fund, selling the Fund's derivative positions for substantially less than the inflated values at which USBFS had marked and reported them. Due to

the fire-sale nature of the liquidation, the Fund's positions were sold for less than they would have been in an orderly liquidation.

51. Approximately one year later, on February 17, 2022, the United States Department of Justice, the SEC, and the United States Commodity Futures Trading Commission ("CFTC") charged Velissaris with criminal and civil fraud and related violations of the federal securities laws:

- An indictment returned by a federal grand jury sitting in the Southern District of New York was unsealed that charged Velissaris with securities fraud, among other crimes;
- The SEC filed a parallel civil enforcement action in the Southern District of New York captioned *Securities & Exchange Commission v. Velissaris*, 22 Civ. 1346, charging Velissaris with securities fraud and other violations of the federal securities laws; and
- The CFTC filed a parallel civil enforcement action in the Southern District of New York captioned *Commodities Futures Trading Commission v. Velissaris*, 22 Civ. 1347, charging Velissaris with various counts of commodities fraud.

52. On November 21, 2022, Velissaris pleaded guilty to securities fraud. At the plea hearing, Velissaris admitted under oath that:

I told investors that I was using an independent Bloomberg system to value the fund's over-the-counter derivatives. However, I was making manual adjustments in the system which increased the values of over-the-counter derivative positions that were reported.

53. Velissaris's motivation in committing the fraud was to increase the investment advisory fees that the Fund was required to pay IQCM (of which he indirectly owned 51%), and to keep IQCM in business at a time when many other investment advisors were being shuttered. By contrast, the inflated valuations hurt the Fund itself by causing it to pay increased investment advisory fees to IQCM and to redeem investor's shares at inflated values.

54. On April 17, 2022, Velissaris was sentenced to 15 years' imprisonment and ordered to pay \$59,152,425.00 in restitution to the Fund. The restitution order entered by U.S. District Judge Denise Cote found the Fund to be a victim of the fraud and awarded the following categories of losses:

- Net inflation loss to the Fund (*i.e.*, inflated redemptions to former shareholders net of any inflation gains to the Fund from those shareholders' purchases at inflated values): \$46.5 million
- Excess investment advisory fees paid by the Fund to IQCM: \$7.5 million
- Payments by the Fund to service providers involved in the liquidation and distribution of the Fund's assets (Russell Investments Implementation Services, Alvarez & Marsal, Cornerstone Research, and Bloomberg): \$5.2 million

Judge Cote found that each of these damages categories met the causation requirements under the Mandatory Victims Restitution Act ("MVRA"), *i.e.*, the damages were directly and proximately caused by the fraudulent valuation of the Fund's securities. None of these amounts have been paid by Velissaris. In addition, because only certain categories of damages are available to be awarded as restitution under the MVRA, the Fund's actual damages far exceed these amounts.

55. Following the discovery of the fraud, TAP formed a Special Litigation Committee ("SLC") to investigate and pursue the Fund's claims against third parties and obtain recoveries for the Fund's investors. This action is the culmination of the SLC's investigation.

56. The SLC, on behalf of TAP and the Fund, entered into a tolling agreement with USBFS effective February 15, 2022, which was subsequently amended to extend the tolling of any statute of limitations through April 30, 2024. TAP, on behalf of the Fund, entered into a tolling agreement with EisnerAmper effective June 1, 2021, which was subsequently amended to extend the tolling of any statute of limitations through March 29, 2024.

USBFS Abdicated Its Contractual Obligations to TAP and the Fund

57. Due to TAP's unique structure as a series trust, USBFS's responsibilities were expansive. Under the terms of the Fund Administration Servicing Agreement, USBFS's responsibilities included:

- a) "General Fund Management," including (i) acting "as liaison among Fund service providers," (ii) providing office facilities, (iii) coordinating "the Trust's board of trustees' . . . communications," (iv) preparing meeting agendas and reports, (v) evaluating the independent auditor, (vi) providing "personnel to serve as officers of the Trust," (vii) preparing "appropriate schedules and assist[ing] independent auditors," and (viii) assisting in the "overall operations of the Fund."
- b) "Compliance," including (i) providing "Regulatory Compliance" services, (ii) monitoring "compliance with the 1940 Act requirements," (iii) monitoring the "Fund's compliance with the policies and investment limitations as set forth in its prospectus . . . and statement of additional information," (iv) performing USBFS's "duties hereunder in compliance with all applicable laws and regulations," (v) monitoring "applicable regulatory and operational service issues, and updat[ing] Board of Trustees periodically," (vi) "SEC Registration and Reporting," and (vii) preparing and filing "annual and semiannual shareholder reports."
- c) "Financial Reporting," including (i) preparing "financial reports for officers, shareholders, tax authorities, performance reporting companies, the Board of Trustees, the SEC, and independent accountants," (ii) supervising the Fund's custodian and fund accountants in "the determination of net asset value," and (iii) preparing quarterly financial statements.

58. Under the terms of the Fund Accounting Servicing Agreement, USBFS separately agreed to provide:

- a) “Portfolio Accounting Services,” including (i) obtaining “prices from a pricing source approved by the board of trustees . . . and apply[ing] those prices to the portfolio positions,” (ii) transmitting “a copy of the portfolio valuation to the Fund’s investment adviser daily,” and (iii) reviewing “the impact of current day’s activity on a per share basis” and “changes in market value.”
- b) “Fund Valuation and Financial Reporting Services,” including (i) determining “the net asset value of the Fund according to the accounting policies and procedures set forth in the Fund’s current prospectus,” (ii) calculating “per share net asset value,” and (iii) maintaining accounts, books, and financial records for the Fund.
- c) “Compliance Control Services,” including (i) maintaining “accounting records according to the 1940 Act and regulations provided thereunder,” (ii) performing USBFS’s “duties hereunder in compliance with all applicable laws and regulations,” and (iii) cooperating “with the Trust’s independent accountants and tak[ing] all reasonable action in the performance of its obligations under this Agreement to ensure that the necessary information is made available to such accountants for the expression of their opinion on the Fund’s financial statements without any qualification as to the scope of their examination.”

59. The Fund Accounting Servicing Agreement further describes the requirements for USBFS’s pricing of the Fund’s securities. Fund Accounting Servicing Agreement § 4(A) states that for “each valuation date, USBFS shall obtain prices from a pricing source recommended by

USBFS and approved by the Board of Trustees and apply those prices to the portfolio positions of the Fund.”

60. Both USBFS agreements expressly require USBFS to “exercise reasonable care in the performance of its duties under this Agreement,” and to indemnify TAP for any and all losses, claims, demands, expenses, liabilities, and reasonable attorneys’ fees that TAP may incur “arising out of any action taken or omitted to be taken by USBFS as a result of,” among other things, USBFS’s failure to comply with the terms of the agreements or its negligence in the performance of its duties.

61. USBFS breached its duties to TAP by, among other things, negligently preparing false and misleading financial reports; failing to perform any due diligence on BVAL or how it was being used by IQCM; relying entirely, and blindly, on Velissaris to value the Fund’s securities; and failing to monitor the Fund’s compliance with securities laws and regulations as well as its own prospectus, statement of additional information, and valuation policy.

62. Despite USBFS’s contractual responsibility for reviewing and recommending pricing services, determining the Fund’s NAV, preparing financial reports, and monitoring compliance, USBFS conducted no due diligence into BVAL and had no understanding of how it worked or how it was being used by Velissaris. In post-liquidation interviews conducted by the SLC, USBFS employees stated that they had considered BVAL to be an independent pricing source (and thus did not require the same level of review as an IQCM-generated valuation), but that USBFS never did anything to confirm that this was true.

63. For example, USBFS never requested or obtained full access to the BVAL valuation models themselves. In post-liquidation interviews, USBFS employees reported that IQCM simply showed them the BVAL screen, which only displayed the model’s output.

According to USBFS employees, they never tested or inspected the models themselves because they blindly assumed that BVAL was an independent pricing service, and thought that if there were any issues that EisnerAmper would have caught them. When asked what internal controls existed at IQCM for the use of BVAL, USBFS employees could not identify any.

64. Email correspondence shows USBFS employees asking Velissaris questions about BVAL, but then either not following up or simply accepting at face value his answers. USBFS employees never performed any actual due diligence on BVAL. As of summer 2018—almost two years after Velissaris started using BVAL purportedly to value the Fund’s derivatives—USBFS was still asking Velissaris elementary questions about how he was using BVAL and what exactly BVAL did. For example, on May 18, 2018, USBFS’s Vice President of Fund Administration and Compliance noted that he received a memo from IQCM describing the various types of “volatility products” in which the Fund was invested and noted that it was helpful. He then wrote to Velissaris:

One area we are hoping you could expand upon is the valuation section There is not any discussion of the BVAL service in the write-up. We know that many of the positions are now valued using this service. . . . Ultimately, we are just trying to develop a more complete record of the valuation methods/practices for the Fund to share with the Board and have on hand for audit/regulatory inquiries. It also helps us as we try to make the appropriate disclosures in the Fund’s financial[] statements and other filings.

Velissaris ducked the USBFS employee’s question, just as he had done in response to prior inquiries. And when USBFS reached out again in August 2018, it did not continue to press for this basic information.

65. This pattern continued throughout 2019, 2020, and early 2021. Indeed, even after the SEC launched an investigation into IQCM in 2020, USBFS still did not report any compliance issues and USBFS employees continued to reassure TAP that valuation risks had been mitigated. At that time, the Fund’s NAV was fraudulently inflated by almost \$500 million.

66. USBFS did not attempt to conduct any due diligence on BVAL until fall 2020. Astonishingly, however, the due diligence that USBFS conducted at that time was to understand business continuity and cybersecurity issues related to BVAL; USBFS was still not conducting any due diligence on how BVAL worked and did nothing to confirm whether BVAL was independently valuing the Fund's securities.

67. Despite USBFS's responsibilities as the liaison between TAP's board and IQCM, despite USBFS's obligation to report operational and compliance issues to the board, and despite USBFS's own valuation and compliance responsibilities under the TAP-USBFS contracts, USBFS never reported any deficiencies to the board. USBFS never disclosed that no one from USBFS had ever actually confirmed what Velissaris was saying about BVAL, or that USBFS had not even looked at the valuation models. USBFS clearly knew that having accurate information about IQCM's valuations was a core priority for the board. As one USBFS employee wrote back in 2015: "No single area of [a] mutual fund is more scrutinized than valuation[.]"

EisnerAmper Ignores Countless Red Flags, Fails to Conduct Audits in Accordance with Audit Standards, and Makes Material Misrepresentations to TAP and the Fund

68. TAP retained EisnerAmper after the Fund's former auditor, BBD, openly expressed discomfort with IQCM's valuations and was unable to issue a timely audit report in 2017 because it could not independently confirm some of IQCM's valuations. Thereafter, TAP engaged EisnerAmper because it supposedly had more experience in valuing complex derivatives. TAP tasked EisnerAmper with providing TAP with greater comfort regarding valuation of the Fund's portfolio.

69. At the outset, Velissaris told EisnerAmper the same thing that he had been telling TAP and its investors about BVAL:

Our current process uses Bloomberg Valuation services (BVAL) as a third party valuation provider for these positions. We email the BVAL team the term sheet (example attached), and they model these positions independently on a daily basis. BBD is having difficulty getting comfortable with these positions due to their lack of familiarity with barrier options and correlation swaps. In addition, the counterparty statements, at times, deviates from the fair value provided by BVAL. This is due to BVAL using mid-market levels on implied volatility and implied correlation while counterparties use internal levels for these inputs (as noted in the MS statement). In addition, BVAL independently selects the model to use for valuation purposes, while the counterparty uses their internal model in these statements.

70. But EisnerAmper knew early on that Velissaris's representations concerning IQCM's use of BVAL and BVAL's purported independence were false. Unlike USBFS, which completely abdicated its responsibility to understand how BVAL functioned and how BVAL was being used by Velissaris, EisnerAmper had Bloomberg create custom templates for it in order to cross-check Velissaris's values. Indeed, according to USBFS, it was EisnerAmper's BVAL work that gave USBFS (false) comfort that BVAL was an independent pricing source.

71. Almost from the outset of its engagement, EisnerAmper's BVAL models did not generate the same valuations that Velissaris had fraudulently generated. EisnerAmper recognized that Velissaris was changing the models to arrive at his own—not *Bloomberg's*—valuations.

72. For example, in an October 5, 2018 email to Velissaris, Ryan Tyas, a member of the EisnerAmper audit team, stated that “[a]fter re-performing a sample selection of 22 of the Vanilla swaps, we found that there were two [for] which we noted rather large differences.” When Velissaris responded later that day, Velissaris instructed EisnerAmper to *change* the volatility surface (a key variable), writing: “[f]or these two securities, in the fixings tab, select London 16:00.” Velissaris included the following screenshot for guidance:

90) Asset		91) Actions		92) Products		93) Views		94) Settings	
1) Calc		31) Solver (Premium)		32) Load		33) Save		34) Trade	
61) Deal 1		62) +							
51) Pricing		58) Fixings							
Start Date	06/28/18	Rateset	Bloomberg Fixing (London 16:00)						
End Date	09/24/18	Asset	USDRUB						
Frequency	Daily	Calendars	USD	RUB					
	Date	Fixing	Weight						
1	06/28/18	63.06010	1.00						
2	06/29/18	62.69020	1.00						

73. EisnerAmper understood that changing this user-selected input would have a material impact on valuation because the value of a variance swap is largely a function of the implied volatility. Yet EisnerAmper never requested any support for Velissaris's assertion that London 16:00 was the proper volatility surface to use to value these two swaps.

74. Even after accepting, without question, Velissaris's cherry-picked volatility surface, EisnerAmper still could not replicate Velissaris's value. EisnerAmper's Tyas thus responded:

We went back and tried this for these two securities. The values were closer, but still significantly off from your values. Our BBG specialist suggested using the 'BVPM' function which would allow you to share with us all *the inputs/settings you used* on your end for these securities. *This way we can just run the same inputs on our end and hopefully come up with the same value.*

75. Thus, by no later than fall 2018 (two years before Velissaris's fraud reached its peak), EisnerAmper understood that the value of the Fund's positions—and, therefore, the Fund's NAV—was being driven by Velissaris's own choice of inputs and settings. EisnerAmper further understood that BVAL was not in fact a third-party valuation service that was providing independent values for the Fund's swaps—as TAP, USBFS, and EisnerAmper itself had been told by Velissaris.

76. EisnerAmper knew that Velissaris had misrepresented Bloomberg's role in the valuation process, which would trigger reporting obligations under the terms of the engagement letters¹ and, at a minimum, enhanced scrutiny of IQCM's valuation process.

77. Despite this, EisnerAmper continued to accept Velissaris's representations at face value through 2019 and 2020, when the fraud was escalating. For inexplicable reasons, EisnerAmper appears to have viewed its role as confirming that it *could*, by changing the BVAL model and/or its assumptions, reach the same or a roughly similar valuation to what Velissaris was reporting—regardless of whether the underlying choice of model and assumptions (or the output) were in fact reasonable. There is no record of EisnerAmper ever actually obtaining direct access to Velissaris's BVAL models, settings, inputs, or code. EisnerAmper appears to have never followed up on its request for Velissaris to share his settings and inputs. EisnerAmper also did not report any of these issues to TAP.

78. Instead, EisnerAmper repeatedly and falsely represented to TAP, in each of its audit reports for 2018, 2019, and 2020, that it had “evaluated the key factors and assumptions used to develop the fair value estimate[.]” And in each of its audits, EisnerAmper gave an unqualified opinion and never disclosed to the Board a single material issue with IQCM's valuation practices, or any deficiency in internal controls over the valuation process.

79. EisnerAmper representatives joined TAP's November 2018 Audit Committee meeting (after the above exchanges between EisnerAmper and Velissaris) to reassure the

¹ See AUDITING STANDARDS OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD FOR FISCAL YEARS ENDING DEC. 15, 2017 THROUGH DEC. 14, 2020 (hereinafter “AS”) No. 2401.79 (“Whenever the auditor has determined that there is evidence that fraud may exist, that matter should be brought to the attention of an appropriate level of management.”).

committee members that, despite the complexity and illiquidity of the Fund's derivatives, EisnerAmper encountered no issues in valuing the derivatives:

Mr. [Garth] Puchert [of EisnerAmper] stated that the audit was completed in a timely fashion and without issue on October 29th, ***and there were no issues to report***. He discussed the composition of the Fund's portfolio, which largely consisted of a variety of over-the-counter derivatives and noted that the Fund held some Level 3 complex swaps that were classified as long-term, but ***there were no issues in fair valuing them***. He stated that Eisner had received cooperation from all parties involved in the audit process and had ***issued an unqualified opinion on the Fund's financial statements as well as a "clean" internal controls letter***.

80. Even worse, EisnerAmper itself misrepresented to TAP's Audit Committee the role that BVAL played in IQCM's valuation process. For example, at the November 17, 2020 Audit Committee meeting (at which time the Fund's NAV was inflated by almost \$485 million):

Mr. Puchert informed the Committee that EisnerAmper ***evaluated the key factors and assumptions used to develop fair value estimates*** in determining that management's estimate of fair value was reasonable in relation to the financial statements as a whole. Mr. Puchert explained that a significant assumption in the valuation of certain of the Fund's derivatives transactions is implied volatility and ***he described how Bloomberg's BVAL pricing service, which is utilized by the Fund's adviser to price most of the Fund's over-the-counter derivatives transactions, is supported by Bloomberg's "Golden Copy" market data***, which he described as a composite of data from multiple contributing sources, such as broker-dealers, banks and exchanges, that is used to develop implied volatility inputs for a transaction's underlying asset.²

As set forth above, EisnerAmper was aware by no later than fall 2018—approximately two years earlier—that it was Velissaris who was selecting the volatility surface, not BVAL. Rather than correcting Velissaris's misrepresentations to TAP concerning the use of an independent pricing service, EisnerAmper amplified the misrepresentations.

² EisnerAmper also told the audit committee that EisnerAmper had engaged a third-party valuation specialist "to confirm that the valuation models being used were satisfactory." EisnerAmper failed to mention that the third-party valuation specialist tested only three of the Fund's positions—roughly 1% of the Fund's derivatives—and had encountered substantial difficulty replicating Velissaris's valuation of one of those positions.

81. Velissaris's fraud was not difficult for a competent auditor to detect. The fraud was not isolated to one or two positions, and it grew over time precisely as a result of Defendants' abdication of their contractual duties. By spring 2020, *65% of the Fund's reported NAV was fabricated*. Confirming the reasonableness of NAV is the most important task of a fund auditor—a point repeatedly emphasized to EisnerAmper. If a model is being used to generate valuations, it is critical for the auditor to have access to and analyze that model, including all inputs, settings, and internal coding. Otherwise, there is no way for the auditor to represent that it “evaluated the key factors and assumptions used to develop the fair value estimate.” And the need to scrutinize valuation models is far greater where, as here, only a single person at the investment advisor—and the person who benefits the most from inflated NAVs—had full input and editing privileges (which is itself a serious internal controls problem that EisnerAmper either never understood, or simply ignored).

82. There was a host of other red flags that EisnerAmper ignored, including: (a) Velissaris's models were generating mathematically impossible valuations for certain positions, (b) Velissaris assigned dramatically different values to the exact same positions that were held by the mutual fund and the hedge fund that IQCM separately managed, (c) the valuations upon maturity of various positions were far less than the values assigned by Velissaris just days or weeks before, and (d) significant disparities between Velissaris's valuations and the valuations that EisnerAmper obtained from counter-parties and neutral valuation services.

83. EisnerAmper's negligent audits were not conducted in accordance with PCAOB standards, as required under the terms of the 2018, 2019, and 2020 agreements with TAP. Among the standards with which EisnerAmper failed to comply are:

- AS 1001.02 (“The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.”);
- AS 2401.13 (“Due professional care requires the auditor to exercise professional skepticism. . . . Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence.”);
- AS 2503.05 (providing examples of auditing procedures for complex derivatives, including (a) “Obtaining an understanding of an entity’s information system for derivatives and securities, including services provided by a service organization”; (b) “Identifying controls placed in operation by a service organization that provides services to an entity that are part of the entity’s information system for derivatives and securities”; and (c) “Understanding the determination of the fair values of derivatives and securities, including the appropriateness of various types of valuation models and the reasonableness of key factors and assumptions[.]”); and
- AS 2503.07 (“The auditor should design and perform audit procedures regarding relevant assertions of derivatives and investments in securities that are based on and that address the risks of material misstatement.”).

84. USBFS failed to perform its fund administration and accounting services with reasonable care and as required by its contracts with TAP. EisnerAmper failed to perform its audits in accordance with the relevant professional standards and as required by its contracts with TAP. USBFS’s and EisnerAmper’s misconduct allowed Velissaris’s fraud to go undetected and directly caused TAP itself to suffer well over \$100 million in damages.

FIRST CAUSE OF ACTION

Breach of Contract Against USBFS

85. TAP repeats and realleges the foregoing allegations as if fully set forth herein.

86. TAP and USBFS entered into the Fund Administration Servicing Agreement, Ex. A, and Fund Accounting Servicing Agreement, Ex. B, effective January 1, 2014.

87. These contracts required USBFS to exercise reasonable care in, among other things, administering the Fund, providing financial reporting, and supplying the Fund with portfolio accounting and fund valuation services.

88. At all relevant times, TAP performed all of its duties and obligations under the contracts.

89. USBFS materially breached the Fund Administration Servicing Agreement and Fund Accounting Servicing Agreement by failing to perform its duties and failing to exercise reasonable care in the performance of its duties. USBFS failed to conduct a meaningful inquiry into Velissaris's use of BVAL, even though BVAL was critical to Velissaris's valuations and USBFS relied on those valuations to perform its obligations.

90. As a direct result of USBFS's breaches, TAP suffered tens of millions of dollars in out-of-pocket losses.

SECOND CAUSE OF ACTION

Contractual Indemnification Against USBFS

91. TAP repeats and realleges the foregoing allegations as if fully set forth herein.

92. Under both the Fund Administration Servicing Agreement and the Fund Accounting Servicing Agreement, USBFS agreed to indemnify TAP for losses arising from USBFS's failure to comply with the terms of the agreements and USBFS's negligence.

93. Each agreement provided that USBFS would “indemnify and hold the Trust harmless from and against any and all claims, demands, losses, expenses, and liabilities of any and every nature (including reasonable attorneys’ fees) that the Trust may sustain or incur or that may be asserted against the Trust by any person arising out of any action taken or omitted to be taken by USBFS as a result of USBFS’ 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.”

94. As a direct result of USBFS’s failure to comply with the terms of its agreements and USBFS’s negligence, TAP has incurred—and continues to incur—tens of millions of dollars in losses and expenses for which USBFS must indemnify TAP. These expenses include, without limitation, all costs of defense and payments that TAP has made under its own indemnification obligations to certain individuals in connection with securities litigation over Velissaris’s fraud.

95. TAP has requested indemnification and satisfied all requirements for indemnification under the parties’ agreements.

96. USBFS has refused to indemnify TAP as expressly required by the parties’ agreements.

97. As a direct result of USBFS’s breaches of its contractual-indemnification obligations, TAP has suffered—and will continue to suffer—tens of millions of dollars in out-of-pocket losses.

THIRD CAUSE OF ACTION

Breach of Contract Against EisnerAmper

98. TAP repeats and realleges the foregoing allegations as if fully set forth herein.

99. TAP and EisnerAmper entered into engagement letters in 2018, 2019, and 2020, Exs. C, D, and E.

100. These contracts required EisnerAmper to, among other things, conduct audits of the Fund’s financial statements in accordance with generally accepted accounting principles and standards.

101. At all relevant times, TAP performed all of its duties and obligations under these contracts.

102. EisnerAmper materially breached the 2018, 2019, and 2020 engagement letters by failing to exercise the care and diligence required by the parties’ contracts and the relevant accounting standards. The accounting standards required, in part, EisnerAmper to perform its audits to obtain reasonable assurance about whether the Fund’s financial statements were free of material misstatement, whether caused by error or fraud. EisnerAmper violated these standards by taking Velissaris’s lies about BVAL’s across-the-board independence for granted, despite encountering numerous red flags in testing Velissaris’s manufactured valuations.

103. As a direct result of EisnerAmper’s breaches, TAP suffered tens of millions of dollars in out-of-pocket losses.

FOURTH CAUSE OF ACTION

Negligent Misrepresentation Against EisnerAmper

104. TAP repeats and realleges the foregoing allegations as if fully set forth herein.

105. EisnerAmper served as the Fund’s auditor. As auditor, EisnerAmper owed TAP a duty to provide complete and correct information about its audits.

106. On or about October 29, 2018, EisnerAmper issued its Report to the Audit Committee and Management for the fiscal year ending August 31, 2018. In its presentation to the TAP’s Board, EisnerAmper represented as follows: “We evaluated the key factors and assumptions used to develop

the fair value estimate in determining that it is reasonable in relation to the consolidated financial statements taken as a whole.”

107. This statement was false. EisnerAmper did not evaluate the key factors and assumptions used to develop the fair value estimate of the Fund’s securities. EisnerAmper did not obtain working versions of the valuation models used by to derive fair value estimates, nor evaluate the assumptions underlying them, which had been manipulated by Velissaris to inflate the Fund’s NAV.

108. EisnerAmper knew, or should have known, that its misrepresentations contained false statements of material fact.

109. On or about October 29, 2019, EisnerAmper issued its Report to the Audit Committee and Management for the fiscal year ending August 31, 2019. In its presentation to the TAP’s Board, EisnerAmper again represented as follows: “We evaluated the key factors and assumptions used to develop the fair value estimate in determining that it is reasonable in relation to the consolidated financial statements taken as a whole.”

110. This statement was false. EisnerAmper did not evaluate the key factors and assumptions used to develop the fair value estimate of the Fund’s securities. EisnerAmper did not obtain working versions of the valuation models used to derive fair value estimates, nor evaluate the assumptions underlying them, which had been manipulated by Velissaris to inflate the Fund’s NAV. At the time of this misrepresentation, the Fund’s securities were overvalued by over \$65 million because the “key factors and assumptions” used to value them had been manipulated.

111. EisnerAmper knew, or should have known, that its misrepresentations contained false statements of material fact.

112. On or about October 29, 2020, EisnerAmper issued its Report to the Audit Committee and Management for the fiscal year ending August 31, 2020. In its presentation to TAP's Board, EisnerAmper again represented as follows: "We evaluated the key factors and assumptions used to develop the fair value estimates in determining that it is reasonable in relation to the consolidated financial statements taken as a whole."

113. This statement was false. EisnerAmper did not evaluate the key factors and assumptions used to develop the fair value estimate of the Fund's securities. EisnerAmper did not obtain working versions of the valuation models used to derive fair value estimates, nor evaluate the assumptions underlying them, which had been manipulated by Velissaris to inflate the Fund's NAV. At the time of this misrepresentation, the Fund's securities were overvalued by almost \$500 million because the "key factors and assumptions" used to value them had been manipulated.

114. EisnerAmper knew, or should have known, that its misrepresentations contained false statements of material fact.

115. EisnerAmper knew, or should have known, that TAP would rely on these representations about the adequacy of its audits.

116. TAP detrimentally relied on EisnerAmper's misrepresentations by continuing to engage EisnerAmper for auditing services, continuing to retain IQCM as an investment advisor, and paying redemptions to investors at inflated NAVs.

117. TAP's reliance on EisnerAmper's representation was both reasonable and justifiable.

118. As a direct and proximate result of EisnerAmper's negligent misrepresentations, TAP suffered tens of millions of dollars in out-of-pocket losses.

PRAYER FOR RELIEF

WHEREFORE, TAP respectfully requests that the Court enter judgment in its favor, and against Defendants, as follows:

- A. Entering judgment in TAP's favor on each claim in the complaint;
- B. As to USBFS, awarding TAP damages and indemnification in an amount to be determined at trial, including, but not limited to, TAP's expectation damages and out-of-pocket losses as a result of Defendants' actions;
- C. As to EisnerAmper, awarding TAP damages in an amount to be determined at trial, including, but not limited to, TAP's expectation damages and out-of-pocket losses as a result of Defendants' actions;
- D. Pre- and post-judgment interest, and all costs and attorneys' fees allowed by law;
- E. Granting TAP such other and further relief as the Court may deem just and proper.

Dated: April 26, 2024
New York, NY

Respectfully submitted,

SUSMAN GODFREY L.L.P.



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