

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

_____ )	
SUSAN KOZA, Individually and on Behalf )	Index No. _____
of all Others Similarly Situated, )	
)	
) Plaintiff, )	
)	
) v. )	
)	
MUTUAL FUND SERIES TRUST, )	<b>Summons</b>
ALPHACENTRIC ADVISORS LLC, )	
NORTHERN LIGHTS DISTRIBUTORS, )	
LLC, JERRY SZILAGYI, BERT PARISER, )	
TOBIAS CALDWELL, TIBERIU WEISZ, )	
and ERIK NAVILOFF, )	
)	
) Defendants. )	Date Index No. Purchased: Oct. 14, 2020
_____ )	

To the Person(s) Named as Defendant(s) above:

**PLEASE TAKE NOTICE THAT YOU ARE SUMMONED** to answer the complaint of the Plaintiff(s) herein and to serve a copy of your answer on the Plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

**YOU ARE HEREBY NOTIFIED THAT** should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial pursuant to CPLR 301, 302(a), and 503. The violations of law complained of herein occurred in this State, including in this County, and a substantial part of the events or omissions giving rise to the claims occurred here.

Dated: October 14, 2020  
New York, New York

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**Defendants:**

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(Class I) during the period of August 1, 2017 through March 20, 2020, inclusive (the “Class Period”), pursuant and/or traceable to one of the Fund’s Registration Statements or Prospectuses.

2. Plaintiff, individually and on behalf of all other persons similarly situated, alleges the following upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon the investigation made by and through her undersigned counsel, which included, *inter alia*, review of SEC filings, various websites and Internet information sources, analyst reports, news articles, bond issues, trading reports, and other publicly available materials.

3. Plaintiff alleges that the Fund, its investment advisor, underwriter, trustees, officers, and other Defendants violated the Securities Act of 1933 (“Securities Act”) by registering, offering, and selling shares of the Fund pursuant to false and misleading registration statements and prospectuses. The action asserts strict-liability, non-fraud claims under §§11, 12, and 15 of the Securities Act.

4. The Fund is a mutual fund, registered under the Investment Company Act of 1940 (the “ICA”). It invests primarily in mortgage-backed securities (“MBS”), and has been heavily invested in non-agency residential MBS (“RMBS”), particularly “legacy” RMBS (mortgages issued before the 2008 financial crisis). It is part of the Mutual Fund Series Trust, an open-end investment management company.

5. One of the key features of mutual funds like the Fund is that they allow investors to redeem their shares on any day during which the exchange upon which they are traded is open. The Fund had no-fee (free) redemptions.

6. To meet their redemption obligations, mutual funds must maintain a level of portfolio liquidity that is appropriate under the circumstance in order to ensure that they have

adequate liquid assets sufficient to meet redemption requests. Like most mutual funds, the Fund promised investors that it would hold only a small portion of its assets in illiquid securities. The Fund's Registration Statements and Prospectuses issued and filed with the SEC during the Class Period represented that the Fund would hold *no more than 15% of its assets in illiquid securities*.

7. In fact, during the Class Period, a far greater portion of the Fund was held in illiquid securities that could not be sold quickly at the value at which they were held. For this reason, when investor redemptions increased, the Fund was not able to fund them without selling its assets at fire sale prices, resulting in a crash in the net asset value ("NAV") of the Fund.

8. Throughout the Class Period, the Fund misrepresented the percentage of its assets that were illiquid securities and failed to disclose that it did not maintain a level of portfolio liquidity appropriate under the circumstances. As such, the Fund was a house of cards waiting to be knocked down as soon as the Fund received a large increase in redemption requests from its investors.

9. From the start of the Class Period until mid-March 2020, investors poured money into the Fund causing assets to increase from approximately \$872 million to \$4.48 billion. The large inflow of new investments during this period masked the truth about the Fund's illiquid investments and the risks associated with those investments.

10. Defendants marketed and sold shares of the Fund as a capital-preserving, income-generating investment tied to the non-agency mortgage market. For example, according to the Fund's Offering Materials (defined herein), the Fund's "investment objective is current income" and "[i]n selecting securities for investment, [the Fund] prioritizes capital preservation, and favors undervalued investments that produce consistent returns in most interest rate environments." In addition, the Fund "primarily focuses on non-agency residential mortgage-backed securities

[RMBS] and other residential housing debt[.]” And, of key importance, the Fund stated that it would not hold more than 15% of its assets in illiquid securities.

11. These statements and others like them in the Fund’s Prospectuses and Registration Statements were inaccurate statements of material fact because they did not disclose that a high percentage of the Fund’s assets (significantly more than 15%) were illiquid and, therefore, that the Fund would have to conduct fire sales in order to meet redemptions if and when redemptions reached a certain level, which would, in turn, dramatically lower the Fund’s NAV.

12. Then, in March 2020, the Fund experienced a sudden, dramatic drop in the NAV of its shares, with over **\$1.8 billion** of Fund value evaporating in a matter of days. In less than a week, between March 17 and March 23, 2020, the NAV for the Fund’s IOFAX share class plummeted from \$12.32 per share to \$7.65 per share, **a decline of nearly 38%**. Such a rapid deterioration in NAV is extremely unusual for a mutual fund given the extensive regulatory framework designed to prevent excessive risk-taking and to safeguard mutual fund investors.

13. Around this same time, several media organizations reported on the shocking erosion in Fund value, with news organizations characterizing the loss as “surprising” and a “carnage.” As for the reasons for the drastic drop in NAV, it was reported the Fund was “desperately trying to sell \$1 billion in assets with no takers” and analysts surmised that growing redemptions were the culprit, concluding the Fund was “inundated with outflows and had to sell” its assets at “fire sale” prices. Analysts were especially puzzled because, just before the sudden drop in NAV, “the [F]und reported a steady NAV for weeks, despite extreme stress across virtually all credit markets” due to the global coronavirus pandemic.

14. The Fund ultimately shrank to approximately \$1.4 billion in assets on March 25, 2020, down from over \$4 billion in assets as of December 31, 2019. The increased redemptions

combined with the illiquidity of the Fund's assets drove down the NAV of the Fund and forced the Fund to sell its illiquid securities at fire sale prices.

15. Since the truth has come to light about the specific illiquidity risk tied to increased redemptions, the Fund acknowledged that this risk should be disclosed to investors. On March 23, 2020, the Fund filed a Prospectus Supplement with the SEC ("the March 23 Supplement"), adding a new disclosure to its "Liquidity Risk" section. The March 23 Supplement states: "The global impact of the coronavirus on the economic and financial markets have caused severe market dislocations and liquidity constraints in fixed income markets including many of the securities the Fund holds. *To satisfy shareholder redemptions, it is more likely the Fund will be required to dispose of portfolio investments at unfavorable prices compared to their intrinsic value.*" The Fund does not explain what is meant by "more likely," but it is clear that this risk, that the Fund would need to dispose of illiquid investments at "unfavorable prices", was real and existing long before March 23, 2020. [Emphasis added.]

#### JURISDICTION AND VENUE

16. The claims asserted herein arise under and pursuant to §§11, 12(a)(2), and 15 of the Securities Act, 15 U.S.C. §§77k, 77i, 77o.

17. This Court has subject matter jurisdiction over this action under the New York Constitution, Article VI, §7(a), and §22 of the Securities Act, 15 U.S.C. §77v. Removal is barred by §22 of the Securities Act.

18. This Court has personal jurisdiction under Rules 301 and 302(a) of the New York Civil Practice Law and Rules ("CPLR") because the Offering Materials were prepared and reviewed, in part, in New York, and because Defendants and their agents solicited the subject securities and transmitted the Offering Materials to investors in New York.

19. This Court has personal jurisdiction over each Defendant named herein because each conducted business in New York at the time of the Offerings, including the drafting of the Offering Materials and soliciting investors in New York. In addition, certain Defendants, including the Fund's Advisor (defined below), reside in New York.

20. Venue is proper pursuant to CPLR 503(a) because a substantial part of the events or omissions giving rise to the claim occurred in this County.

### **PARTIES**

#### **A. Plaintiff**

21. Plaintiff Susan Koza purchased shares of the Fund during the Class Period pursuant or traceable to the Registration Statements and Prospectuses at issue in this Complaint and has been damaged thereby.

#### **B. Defendants**

22. Defendant Mutual Fund Series Trust (the "Trust") is the Fund's registrant and an open-end management investment company, registered under the Investment Company Act of 1940 (the "ICA"), that consists of different investment series, including the Fund. The Fund is a mutual fund within the Trust series of mutual funds. It offers three share classes to investors with the following ticker symbols (IOFAX) (Class A), IOFCX (Class C), and IOFIX (Class I).

23. The Trust is organized under the laws of Ohio pursuant to an Agreement and Declaration of Trust dated February 27, 2006. The Trust is headquartered at 4020 S. 147th Street, Suite 2, Omaha, Nebraska 68137-5409. The Trust resides in and/or transacts business in New York. The Trust is run by a Board of Trustees (the "Board").

24. Defendant AlphaCentric Advisors LLC is and was the Fund's investment advisor (the "Advisor") at all relevant times. The Advisor has been retained by the Fund under a Management Agreement to act as the Fund's Advisor, subject to the oversight of the Board. The

Advisor is a Delaware limited liability company with its address at 53 Palmeras Street, Suite 601, San Juan, Puerto Rico 00901 (as of January 2020; previously, 36 North New York Avenue, Huntington, New York 11743). The Advisor resides in and/or transacts business in New York. The Advisor is under common control with Catalyst Capital Advisors LLC and Rational Advisors, Inc., the investment advisers of other funds in the same group of investment companies also known as a “fund complex.” Management of the Fund (as well as others in the fund complex) is the Advisor’s primary business. The Advisor carries out its duties, subject to the policies established by the Fund’s Board, under a Management Agreement. As compensation for its services, the Advisor receives a management fee.

25. Northern Lights Distributors LLC (“Northern Lights” or the “Distributor”) is and was the principal underwriter and national distributor for the shares of the Fund pursuant to an Underwriting Agreement with the Trust. The Distributor also served as the Trust’s agent for the purpose of the continuous public offering of the Fund’s shares. The Distributor is a Nebraska limited liability company with its headquarters located in Omaha, Nebraska. Northern Lights transacts business in New York.

26. Defendant Jerry Szilagyi (“Szilagyi”) is and was the Chairman of the Board of the Trust at all relevant times as well as the Trust’s President and Principal Executive Officer. He signed each Registration Statement effective during the Class Period. Szilagyi also is and was a Member of the Advisor at all relevant times. Since 2006, Szilagyi has also been Chief Executive Officer of Catalyst Capital Advisors LLC (“Catalyst”), the investment advisor to certain other series of the Trust. Szilagyi resides in and/or transacts business in New York.

27. Defendant Dr. Bert Pariser (“Pariser”) is and was a Trustee of the Board at all relevant times. He signed each Registration Statement effective during the Class Period. Pariser resides in and/or transacts business in New York.

28. Defendant Tobias Caldwell (“Caldwell”) is and was a Trustee of the Board at all relevant times. He signed each Registration Statement effective during the Class Period. Caldwell resides in and/or transacts business in New York.

29. Defendant Tiberiu Weisz (“Weisz”) is and was a Trustee of the Board at all relevant times. He signed each Registration Statement effective during the Class Period. Weisz resides in and/or transacts business in New York.

30. This Complaint refers to Szilagyi, Pariser, Caldwell, and Weisz as the “Trustee Defendants.”

31. Defendant Erik Naviloff (“Naviloff”) is and was Treasurer and Principal Financial Officer of the Trust at all relevant times. He signed each Registration Statement effective during the Class Period. Naviloff is also the Vice President, Fund Administration, of Gemini Fund Services, LLC (“GFS”). GFS serves as administrator, fund accountant, and transfer agent for the Fund pursuant to a Fund Services Agreement. GFS is an affiliate of the Distributor. Naviloff resides in and/or transacts business in New York.

32. This Complaint refers to the Trustee Defendants and Naviloff as the “Individual Defendants.”

### **BACKGROUND**

33. The Fund began selling shares as a mutual fund in or around late May 2015.

34. As a mutual fund, the Fund is registered as an investment company under the ICA. It offers securities to the public, and those offerings are required to be registered under the Securities Act.

35. Under the ICA, mutual fund advisors must also file periodic reports with the SEC, provide enhanced disclosures to mutual fund investors, act in the best interests of their clients, and implement extensive risk management and operational controls and procedures.

36. In addition, mutual fund shares must be priced daily at NAV, and investors generally must be able to freely redeem their shares. Because they must maintain portfolio liquidity to satisfy share redemptions and to protect investors, mutual funds are also subject to various investment restrictions, including limits on the amount of risk they may take on, their ability to concentrate investments in an issuer or industry, the amount of leverage they can be exposed to, and the types of securities they can invest in.

37. According to the Offering Materials, “[t]he Fund’s objective was current income.” The Fund told investors that it sought to achieve this investment objective by primarily investing in asset-backed fixed income securities, such as securities backed by credit card receivables, automobiles, aircraft, student loans, equipment leases, and agency and non-agency residential and commercial mortgages. The allocation of investment in these asset classes depended on which asset classes offered the “best risk-adjusted values in the marketplace at a given time.” The Fund said it expected to focus its investments in non-agency residential mortgage backed securities and that, “[u]nder normal circumstances, the Fund invests over 25% of its assets in residential mortgage-backed securities (agency and non-agency) and commercial mortgage-backed securities.” In fact, as of December 31, 2019, 94.8% of the Fund’s portfolio was invested in RMBS, with 59.9% in legacy RMBS.

#### **DEFENDANTS’ MISLEADING OFFERING MATERIALS**

38. This is a class action on behalf of all persons or entities who acquired the Fund’s shares during the period from August 1, 2017 through March 23, 2020, inclusive, pursuant to

untrue and misleading Registration Statements and Prospectuses issued in connection with the continuous offering of the Fund's shares during this period.

39. Defendants issued and distributed the following documents in connection with the continuous offering of the Fund's shares to the investing public during the Class Period:

(a) The Fund Registration Statements filed with the SEC on the following dates (collectively, the "Registration Statements"):

(i) July 25, 2017 (the "2017 Registration Statement");

(ii) July 27, 2018 (the "2018 Registration Statement"); and

(iii) July 26, 2019 (the "2019 Registration Statement").

(b) The Fund Prospectuses dated August 1, 2017, August 1, 2018, and August 1, 2019 (collectively, the "Prospectuses"), which formed part of the Registration Statements);

(c) The Fund Summary Prospectuses dated August 1, 2017, August 1, 2018, and August 5, 2019 (collectively, the "Summary Prospectuses");

(d) The Fund Statements of Additional Information ("SAIs"), which were expressly incorporated into the Prospectuses and thereby the Registration Statements, dated August 1, 2017, August 1, 2018, and August 1, 2019;

(e) Fund Fact Sheets published during the Class Period, which were issued quarterly and used by Defendants to solicit purchasers of Fund shares.

40. The documents referenced in ¶39 are collectively referred to herein as the "Offering Materials."

41. Each of the foregoing documents was negligently prepared and contained untrue statements of material fact and/or omitted to state other facts necessary to make the statements

made not misleading, as described below. While the documents were not identical, they contained many substantially similar untrue statements and were rendered misleading by substantially similar omissions of material fact.

42. A reasonable investor would have viewed the undisclosed facts described herein, jointly and severally, as having altered the total mix of available information. A reasonable investor also would understand that the undisclosed facts would cause the Fund to undertake materially increased investment risk during the Class Period because the Fund was investing in a manner that was of materially greater risk than had been disclosed. Defendants made materially false and misleading statements in the Offering Materials regarding the Fund's investment strategy, particularly its holding of illiquid assets including what percent of its assets were illiquid, and the risks to investors of investing in Fund shares. For example, the Offering Materials stated that "[t]he Fund may hold up to 15% of its net assets in illiquid securities."

43. The Offering Materials also stated that, "in selecting securities for investment," the Fund "prioritizes capital preservation, and favors undervalued investments that produce consistent returns in most interest rate environments." The Offering Materials also stated that "[The Fund] selects those securities for investment that it believes offer the best risk/return opportunity based on its analyses of a variety of factors including collateral quality, duration, structure, excess interest, credit support, potential for greater upside and less downside capture, liquidity, and market conditions" and that the Fund "intends to hold the securities in its portfolio until maturity but may sell the securities held in its portfolio when the opportunity to capture outsized returns exists."

44. Regarding redemptions, the Offering Materials stated, "[t]he . . . Fund typically expects to pay redemptions from cash, cash equivalents, proceeds from the sale of Fund shares, a

line of credit, and then from the sale of portfolio securities. These redemption payment methods will be used in regular and stressed market conditions.”

45. The Company also told investors that its “investment process” included “[r]un[ning] scenario/cash flow analysis to stress test different interest, credit and macroeconomic environments.”

46. These statements and the Offering Materials were false and misleading because they failed to disclose the true (still unknown) extent of the Fund’s illiquid holdings or the related risks investors faced in the event of a spike in redemptions.

47. The Offering Materials also failed to disclose the true risks related to the Fund’s strategy of investing in non-agency RMBS, particularly legacy RMBS. While the Offering Materials provided boilerplate risk disclosures including “Market” and “Liquidity” Risk, they failed to disclose the concrete and specific risk to investors that the Fund stood to lose over a billion dollars of net assets if there was a spike in redemptions for any reason, due to its illiquid holdings.

48. The Offering Materials also highlighted the Fund’s purported risk oversight procedures. The Offering Materials stated in pertinent part as follows:

In its risk oversight role, the Board oversees risk management, and the full Board engages in discussions of risk management and receives reports on investment and compliance risk at quarterly meetings and on an ad hoc basis, when and if necessary. The Board, directly or through its Audit Committee, reviews reports from among others, the advisers, sub-advisers, the Trust’s Chief Compliance Officer, the Trust’s independent registered public accounting firm, and the Independent Trustees’ counsel, as appropriate, regarding risks faced by the Trust and the Fund and the risk management programs of the Trust, the advisers and certain service providers. The full Board regularly engages in discussions of risk management and receives compliance reports that inform its oversight of risk management from the Trust’s Chief Compliance Officer at quarterly meetings and on an ad hoc basis, when and if necessary. The Trust’s Chief Compliance Officer also meets at least quarterly in executive session with the Independent Trustees. The actual day-to-day risk management with respect to the Fund resides with the Fund’s adviser and other service providers to the Fund. Although the risk management policies of the adviser and the service providers are designed to be

effective, those policies and their implementation vary among service providers and over time, and there is no guarantee that they will be effective. Generally, the Board believes that its oversight of material risks is adequately maintained through the risk-reporting chain[.]

49. These statements were false and misleading because the non-agency RMBS strategy employed by the Fund was itself a source of significant risk for Fund investors and would significantly increase the extent of losses in the event of a rapidly increasing redemptions, due to their illiquid nature.

50. The Offering Materials also detailed how the Fund calculates its daily NAV. For assets for which market quotations are available, valuations are straightforward. In the absence of an ascertainable market value, assets are valued at their fair value as determined by the Advisor using methods and procedures reviewed and approved by the Trustees.

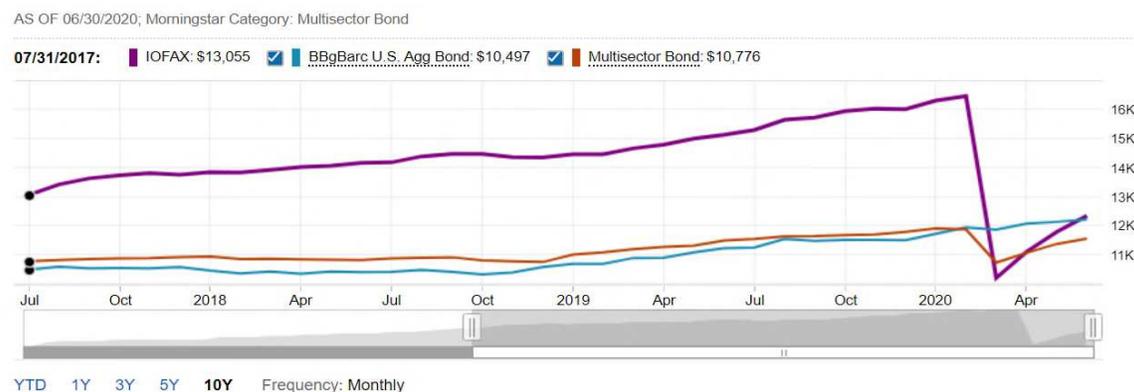
51. These statements were false and misleading because the daily NAV did not reflect the true value of the illiquid securities held by the Fund and for which the Trust could (and would) face a no-bid market.

52. In addition, Item 303 of SEC Regulation S-K, 17 C.F.R. §229.303(a)(3)(ii), requires defendants to “[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” Similarly, Item 503 of SEC Regulation S-K, 17 C.F.R. §229.503, requires, in the “Risk Factor” section of the Registration Statements and Prospectuses, “a discussion of the most significant factors that make the offering speculative or risky” and requires each risk factor to “adequately describe[]the risk.” The failure to disclose in the Offering Materials the risk of severe losses to Fund investors in the case of rapidly increasing redemptions and due to the illiquidity of its holdings violated 17 C.F.R. §229.303(a)(1) and §229.303(a)(3)(ii) because it would (and did) result in the Fund’s liquidity increasing or decreasing

in a material way and because it would (and did) have an unfavorable impact on the Fund's net investment income from operations. The failure also violated 17 C.F.R. §229.503 because these specific risks were not adequately disclosed, or disclosed at all.

53. Then, in mid-March 2020, the Fund experienced a sudden, precipitous decline in the NAV of Fund shares, with **\$1.8 billion** of Fund value evaporating in a matter of days. In less than a week, between March 17 and March 23, 2020, the NAV for the Fund's IOFAX share class plummeted from \$12.32 per share to \$7.65 per share, a decline of nearly 38%. The IOFCX and IOFIX share classes declined similarly. Such a rapid deterioration in NAV is extremely unusual for a mutual fund given the extensive regulatory framework designed to prevent excessive risk-taking and to safeguard mutual fund investors.

54. The decline in the Fund's NAV cannot be explained by general market movements. Its losses were far in excess of those of the U.S. aggregate bond market during the same time period:



55. Around this same time, several media organizations began reporting on the shocking erosion in Fund value, characterizing the losses as “surprising” and a “carnage.” As for the reasons for the drastic drop in NAV, it was reported the Fund was “desperately trying to sell \$1 billion in assets with no takers” and analysts surmised that growing redemptions were the cause, concluding the Fund was “inundated with outflows and had to sell” its assets at “fire sale” prices.

Analysts were especially puzzled because, just before the sudden drop in NAV, “the [F]und reported a steady NAV for weeks, despite extreme stress across virtually all credit markets” due to the global coronavirus pandemic.

56. As would be revealed over time, the Fund had been forced to shop for buyers of its assets in order to satisfy customer redemptions and forced to sell assets at extremely low prices, resulting in the drastic decline in its NAV.

57. As these undisclosed risks materialized, the Fund’s investors suffered hundreds of millions of dollars in losses, with the value of Fund assets *plummeting over \$1.8 billion*. Between March 17, 2020 and March 23, 2020, the NAV of the Fund’s IOFAX share class, IOFCX share class and IOFIX share class each declined approximately 38%, or \$4.67 per share, \$4.89 per share and \$4.68 per share, respectively.

58. On October 12, 2020, *The Wall Street Journal* published an article entitled, “SEC Probes Small Bond Trades That Lead to Big Returns.” The article reported on the practice of “odd lots” purchasing and valuation by mutual funds invested in mortgage-backed securities, including the Fund.

### CLASS ACTION ALLEGATIONS

59. Plaintiff brings this action as a class action on behalf of herself and all persons who purchased shares of the Fund during the Class Period (the “Class”). Excluded from the Class are Defendants and their families, the officers and directors of the Fund, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

60. The members of the Class are so numerous that joinder of all members is impracticable. As of March 2, 2020, there were over 33.297 million IOFAX shares outstanding, 12.596 million IOFCX shares outstanding, and 287.545 million IOFIX shares outstanding. While

the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Fund or its agents and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

61. Common questions of law and fact predominate and include: (i) whether Defendants violated the Securities Act; (ii) whether Defendants omitted and/or misrepresented material facts; and (iii) the extent and appropriate measure of damages.

62. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

63. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

64. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **COUNT I**

#### **Violation of §11 of the Securities Act (Against the Trust, Distributor, and Individual Defendants)**

65. Plaintiff incorporates the allegations in ¶¶1-64 as though fully set forth herein.

66. This Count is brought pursuant to §11 of the Securities Act on behalf of Plaintiff and the Class against the Trust, the Distributor and the Individual Defendants.

67. The Registration Statements were inaccurate and misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

68. The Trust is the registrant for the shares of the Fund, and as such is strictly liable for the false statements contained in the Registration Statements. The Distributor, as the Fund's underwriter, and the Trustee Defendants who signed the Registration Statements, were responsible for the contents and dissemination of the Registration Statements.

69. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statements were true and without omissions of any material facts and were not misleading.

70. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, §11 of the Securities Act.

71. Plaintiff acquired shares of the Fund during the Class Period and pursuant to the Registration Statements.

72. Plaintiff and the Class have sustained damages. The value of the shares of the Fund has declined substantially subsequent to and due to Defendants' violations.

73. At the times they purchased shares of the Fund, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein. Less than one year has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based to the time of filing of the Complaint. Less than three years has elapsed between the time that the securities upon which this Count is brought were offered to the public and the time of the filing of the Complaint.

**COUNT II**  
**Violation of §12(a)(2) of the Securities Act**  
**(Against All Defendants)**

74. Plaintiff incorporates the allegations in ¶¶1-73 as though fully set forth herein.

75. This Count is brought pursuant to §12(a)(2) of the Securities Act on behalf of Plaintiff and the Class against all Defendants.

76. Defendants were sellers and offerors and/or solicitors of purchasers of the shares of the Fund offered pursuant to the Registration Statements, Prospectuses and other Offering Materials and were motivated by a desire to serve their own financial interests or those of the Fund or the Advisor.

77. The Prospectuses contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein. The Advisor, the Individual Defendants', and the Distributor's actions of solicitation included participating in the preparation of the false and misleading Prospectuses and participating in marketing the shares of the Fund to investors.

78. Defendants owed to the purchasers of Fund shares, including Plaintiff and other Class members, the duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses and corresponding supplements and amendments to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectuses as set forth above.

79. Plaintiff and the other members of the Class purchased or otherwise acquired shares of the Fund pursuant to the defective Prospectuses. Plaintiff did not know, nor in the exercise of

reasonable diligence could she have known, of the untruths and omissions contained in the Offering Materials for the Funds.

80. By reason of the conduct alleged herein, Defendants violated, and/or controlled a person who violated, §12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold shares of the Fund have the right to rescind and recover the consideration paid for their shares of the Fund and hereby elect to rescind and tender those shares to the Defendants sued herein. Plaintiff and Class members who have sold their shares of the Fund are entitled to rescissory damages.

**COUNT III**  
**Violation of §15 of the Securities Act**  
**(Against the Advisor and Individual Defendants)**

81. Plaintiff incorporates the allegations in ¶¶1-80 as though fully set forth herein.

82. This Count is brought pursuant to §15 of the Securities Act on behalf of Plaintiff and the Class against the Advisor and the Individual Defendants.

83. Each of the Individual Defendants was a control person of the Fund by virtue of his position as a director, Trustee and/or senior officer of the Fund, the Trust or the Advisor. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other Trustees, directors and/or officers and/or major shareholders of the Fund.

84. The Advisor managed and controlled the business affairs of the Fund and was a control person of the Fund. The Advisor and its directors and/or officers each had a series of direct and/or indirect business and/or personal relationships with the Trustees, directors and/or officers and/or major shareholders of the Fund.

85. Each of the Defendants named herein was each a culpable participant in the violations of §§11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on their having signed the Registration Statements and/or having otherwise participated in the process

which allowed the sale of the shares of the Fund to be successfully completed. By reason of such conduct, the Defendants named in this Count are liable pursuant to §15 of the Securities Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Determining that this action is a proper class action and certifying Plaintiff as Class Representative;
- B. Awarding damages and interest;
- C. Awarding rescission and/or a rescissory measure of damages;
- D. Awarding Plaintiff's reasonable costs, including attorneys' fees; and
- E. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: October 14, 2020

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