

HDM:SME/EWS/JOE/LM
F. #2022R00155

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

JOHN CANGIALOSI,
PETER GIRGIS,
GENE SARABELLA,
 also known as "Jerry Sarabella,"
ENRICO CARINI,
 also known as "Ed Carini," and
CANER OTAR,
 also known as "John Otar,"

Cr. No. **24-CR-363**
(T. 15, U.S.C., §§ 78j(b), 78ff, 80b-6 and
80b-17; T. 18, U.S.C., §§ 371,
981(a)(1)(C), 982(a)(1), 982(b)(1), 1349,
1956(h), 2 and 3551 et seq.; T. 21,
U.S.C., § 853(p); T. 28, U.S.C.,
§ 2461(c))

**Judge Carol Bagley Amon
Magistrate Judge Lois Bloom**

Defendants.

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THE GRAND JURY CHARGES:

I N T R O D U C T I O N

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendants and Relevant Entities

1. In or about and between May 2021 and August 2023, Max Infinity Management LLC and its affiliated entities, including Elder Fund Management LLC ("Max Infinity"), managed and acted as an unregistered investment adviser to a series of investment funds. Max Infinity's principal place of business was at 40 Wall Street, New York, New York. Max Infinity's various investment funds, which were generally named in a numbered sequenced series, e.g., "MAX 1, a Series of Max Infinity Fund LLC," purported to invest in stock issued by privately held companies that, at the time of investment, purportedly anticipated making an

Initial Public Offering (“IPO”) in the near future. Max Infinity in turn solicited investments in the funds that purported to own these stocks from individual retail investors, including investors located in the Eastern District of New York. Max Infinity acquired these shares from a variety of sources, including the privately held companies’ employees or former employees, registered broker-dealers and other investment funds.

2. The defendant JOHN CANGIALOSI held no official title at Max Infinity, but, together with the defendant PETER GIRGIS, directed Max Infinity’s operations as an undisclosed control person. On or about August 12, 2021, the Financial Industry National Regulatory Authority (“FINRA”) suspended CANGIALOSI from associating with any FINRA member, i.e., any broker-dealer, for nine months, beginning September 7, 2021, and ending June 6, 2022, as a result of engaging in unsuitable trading in three customer accounts.

3. The defendant PETER GIRGIS held no official title at Max Infinity, but, together with the defendant JOHN CANGIALOSI, directed Max Infinity’s operations as an undisclosed control person. On or about December 1, 2021, FINRA suspended GIRGIS from associating with any FINRA member, i.e., any broker-dealer, for nine months, beginning January 3, 2022, and ending October 2, 2022, as a result of engaging in unsuitable trading in customer accounts. GIRGIS lived in the Eastern District of New York.

4. The defendant GENE SARABELLA, also known as “Jerry Sarabella,” was the sole member and owner of Max Infinity Management LLC. SARABELLA held himself out to Max Infinity’s clients as its president. SARABELLA was never registered with FINRA as a registered representative, i.e., stockbroker, in any capacity.

5. In or about and between May 2021 and March 2023, the defendant ENRICO CARINI, also known as “Ed Carini,” was a salesperson at Max Infinity. CARINI was

never registered with FINRA as a registered representative, i.e., stockbroker, in any capacity. CARINI lived in the Eastern District of New York.

6. In or about and between July 2021 and November 2022, the defendant CANER OTAR, also known as “John Otar,” was a salesperson at Max Infinity. In or about and between November 2011 and July 2018, OTAR was registered with FINRA as a registered representative, i.e., a stockbroker. OTAR lived in the Eastern District of New York.

II. Relevant Regulatory Principles and Definitions

7. A “security” was, among other things, any note, stock, bond, debenture, evidence of indebtedness, investment contract or participation in any profit-sharing agreement.

8. A “private placement memorandum” (“PPM”) was a securities disclosure document used in a private offering of securities by a company or investment fund.

9. “Carried interest” was a share of profits earned by the operators of an investment fund.

III. The Fraudulent Scheme

10. In or about and between May 2021 and August 2023, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, engaged in a scheme to defraud investors and prospective investors in securities offered by Max Infinity through material misrepresentations relating to, among other things, (i) the existence and amount of fees paid by investors in fund interests offered by Max Infinity and the methodology of setting prices for fund interests that purported to own shares of stock; (ii) the involvement of CANGIALOSI and GIRGIS in Max Infinity’s operations; (iii) Max Infinity’s registration status with the SEC; (iv) the sourcing of pre-IPO stock; (v) Max Infinity’s

past performance; and (vi) the likelihood that clients would see a return on investment. As part of their criminal scheme, CANGIALOSI, GIRGIS and SARABELLA took steps to conceal aspects of the fraud and their participation in it.

11. Max Infinity offered interests in funds that purported to own shares of stock in private companies to investors nationwide, including in the Eastern District of New York. The defendants JOHN CANGIALOSI, PETER GIRGIS and GENE SARABELLA, also known as “Jerry Sarabella,” held daily morning meetings at Max Infinity’s office with salespeople during which they directed which fund interests in pooled pre-IPO stocks salespeople could offer prospective investors, the prices at which those fund interests could be sold and the pitch language to use in soliciting investments. During these meetings, CANGIALOSI, GIRGIS and SARABELLA worked with salespeople on mock sales pitches. In other instances, CANGIALOSI, SARABELLA and GIRGIS pitched fund interests in pooled pre-IPO stocks to prospective investors by phone while salespeople listened.

12. Max Infinity salespeople sold investments to prospective investors identified in “lead lists” that Max Infinity purchased. Max Infinity salespeople then cold-called the prospective investors on the lead lists. When prospective investors would not pick up calls from known salespeople at Max Infinity, the salespeople sometimes used “spoofing” applications to trick prospective investors into thinking they were receiving phone calls from someone else. Several investors and prospective investors contacted by Max Infinity salespeople were in the Eastern District of New York.

13. Max Infinity’s salespeople instructed investors to send their investments by wire transfer or check to one of various bank accounts in the name of Max Infinity. Once investor funds were received, the defendant GENE SARABELLA, also known as “Jerry

Sarabella,” would transfer the funds to a series of bank accounts in the name of a nominal entity he controlled for his benefit and the benefit of the defendants JOHN CANGIALOSI and PETER GIRGIS. Those accounts were used, both directly and indirectly, to pay commissions to Max Infinity salespeople. They were also used to transfer funds to accounts controlled by CANGIALOSI, GIRGIS and SARABELLA, which funds represented distributions of undisclosed markups charged to investors. In some instances, SARABELLA transferred funds to CANGIALOSI and GIRGIS in the form of cashier’s checks drawn from bank accounts in the name of the nominal entity SARABELLA controlled. SARABELLA also used investor funds transferred to the nominal entity he controlled to purchase over one million dollars’ worth of luxury watches from a vendor located in the Eastern District of New York.

14. In or about and between September 2022 and August 2023, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” created a new entity, Elder Fund Management LLC (“Elder Fund”), to continue the fraudulent scheme.

A. False Statements Concerning Markups and Commissions

15. The defendants JOHN CANGIALOSI, PETER GIRGIS and GENE SARABELLA, also known as “Jerry Sarabella,” directed the pitch language that was used by Max Infinity’s salespeople to market investments in Max Infinity. As part of that pitch, CANGIALOSI, GIRGIS and SARABELLA directed the employees to state that Max Infinity only made money when its investors made money, and that the only fees assessed were carried interest of 20% of the profits upon the exit of the investment. Investors were thus led to believe that the full amount of their invested capital was used to purchase stock that would be held by the respective fund. In reality, Max Infinity regularly charged significant undisclosed markups, including markups of more than 95%, of each investment they sold. Max Infinity used the

money from those undisclosed markups to, among other things, pay their salespeople (including by taking undisclosed commissions of approximately 5% to 15% of the amount of each investor's investment) and make distributions to Max Infinity's control persons.

16. The PPMs for several of Max Infinity's funds stated in capital letters on the first page: "THE MANAGER WILL NOT RECEIVE ANY COMMISSIONS OR FEES FOR THE SALE OF INTERESTS PURSUANT TO THE MEMORANDUM." Those PPMs further stated that "the Fund will invest an amount equal to the total subscriptions less the amounts reserved for Fund expenses" in pre-IPO stock. In reality, a significant portion of funds raised from investors was not invested in pre-IPO stock, but instead constituted the undisclosed markups that were used to pay commissions to salespeople or make distributions to Max Infinity's control persons. Max Infinity made similar statements emphasizing the absence of any fees in other offering documents that Max Infinity emailed and mailed to prospective and actual investors. For example, a "side letter" that Max Infinity routinely sent investors stated that Max Infinity would receive a "carry" or "carried interest" equal to twenty percent of any net profits realized by Max Infinity at the time the underlying shares or proceeds from the sales of such shares were distributed to investors, but did not disclose any additional fees or commissions.

17. In or about May 2022, the Securities and Exchange Commission ("SEC") initiated an enforcement action against an unrelated entity that similarly purported to invest in stock issued by privately held companies. Shortly after that enforcement action was filed, Max Infinity added additional language to newly distributed PPMs regarding markups (the "Markup Statement"): "[w]hile we are not charging any fees in connection with this offering (other than Fund Expenses), we are charging a markup represented by the difference between the price we paid for the shares of the Portfolio Company and the price we are charging you to purchase

Interests in the Fund proportionate [to] the number of Portfolio Company shares in which you will hold a beneficial interest. The funds represented by the markup will be used to provide compensation to the individuals who oversee the management of the Fund.” However, the Markup Statement was itself false and misleading, as it failed to disclose that customers’ investments were also used to pay commissions to Max Infinity’s salespeople. The Markup Statement was also contradicted by other statements contained elsewhere in Max Infinity’s PPMs, which were more than fifty pages in length. For example, the PPMs continued to include the above-described statement on the first page of the document disclaiming any “commissions or fees” for the “Manager.” Moreover, Max Infinity salespeople continued not to disclose the fact of a markup while soliciting investments from prospective clients by phone, and did not disclose the amount of the markup verbally or in writing.

18. The upfront revenue generated by undisclosed markups was used to pay commissions to Max Infinity’s salespeople, including the defendants ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” and, as described above, to pay Max Infinity’s control persons, the defendants JOHN CANGIALOSI, PETER GIRGIS and GENE SARABELLA, also known as “Jerry Sarabella.” In total, between approximately July 2021 and August 2023, Max Infinity raised at least \$60 million from investors and diverted approximately \$27 million in undisclosed markups, commissions and various fund expenses for the benefit of the defendants and other Max Infinity employees.

19. The defendant GENE SARABELLA, also known as “Jerry Sarabella,” maintained a handwritten notebook accounting for the undisclosed commissions and markups charged to investors. This notebook calculated commissions owed to Max Infinity salespeople based on a client’s investment, the markup applied to each of those investments and how profits

per investment would be split among SARABELLA and the defendants JOHN CANGIALOSI and PETER GIRGIS.

B. False Statements Concerning Max Infinity's Control Persons

20. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as "Jerry Sarabella," ENRICO CARINI, also known as "Ed Carini," and CANER OTAR, also known as "John Otar," falsely represented to investors that SARABELLA was the president and CEO of Max Infinity, and that Co-conspirator #1, an individual whose identity is known to the Grand Jury, was the manager of the respective funds. In actuality, and as the defendants well knew, CANGIALOSI and GIRGIS were at times directing Max Infinity's operations as undisclosed control people while subject to staggered nine-month suspensions imposed by FINRA. When one investor learned that CANGIALOSI was associated with a Max Infinity fund, the investor complained that his or her "investment was mis[re]presented," adding, "I found out today that John [CANGIALOSI] has a Finra Allegation of over \$10,300,000 against him. I am very concerned about what is happening with Max Infinity."

21. When calling prospective investors, the defendants JOHN CANGIALOSI and PETER GIRGIS routinely used pseudonyms or the names of other individuals associated with Max Infinity to conceal their true identities, as did other salespeople from Max Infinity.

C. False Statements Concerning Max Infinity's Registration with the SEC

22. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as "Jerry Sarabella," ENRICO CARINI, also known as "Ed Carini," and CANER OTAR, also known as "John Otar," falsely represented, or caused Max Infinity's

salespeople to falsely represent, to investors that the company and its investment funds were registered with the SEC when they were not.

23. In furtherance of these false representations, the defendants GENE SARABELLA, also known as “Jerry Sarabella,” and PETER GIRGIS, along with numerous other Max Infinity salespeople, directed clients to a website that purported to show that Max Infinity was registered with the SEC. For example, on or about September 3, 2022, GIRGIS texted the defendant ENRICO CARINI, also known as “Ed Carini,” a link to a website purporting to be an authentic SEC webpage and instructed CARINI to send the link to a prospective client. On or about August 11, 2021, the defendant JOHN OTAR emailed the same link to a prospective client.

24. The defendants ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” misrepresented Max Infinity’s registration status, including on consensually recorded telephone calls. For instance, on or about September 7, 2022, OTAR was asked by a law enforcement agent posing as a prospective investor (“Undercover Officer-1”), “I assume you guys are licensed by the SEC so you gotta play by their rules, right?” OTAR responded, “Yup, exactly.” And on or about November 14, 2022, CARINI, using an alias to conceal his true identity, falsely told a prospective client that the SEC “come[s] in with compliance every quarter[,]” “check the books, make sure everything is up to date.” He later added, “Just to file the registration and the 8-K and 10-K annual reports and prospectus and current reports, that makes us up to date. The fund itself, the LLC fund, everything is filed with the SEC. So in order to file, they—they go through all the books, the accounting, the bank statements, everything you could think of before they even allow a fund to be operational. And like I said, they come in every quarter and make sure that everything is up to date.”

D. False Statements Concerning the Sourcing of Pre-IPO Stock

25. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” falsely represented to clients how Max Infinity primarily acquired the shares it resold to investors. Many of the shares purchased by Max Infinity were acquired from third-party broker-dealers and investment funds pursuant to forward contracts, which depended upon the performance of the original contracting party to deliver the shares to its counterparty. Shares acquired by Max Infinity pursuant to forward contracts were often subject to contractual transfer restrictions that could prevent the immediate delivery of shares to Max Infinity’s clients. Max Infinity’s salespeople, however, represented to customers on multiple occasions that the company acquired shares directly from issuing companies or their employees. Max Infinity’s offering documents likewise misstated how the company acquired shares. For instance, the PPM for Max Infinity’s fund that purported to invest in securities issued by Company-1, a privately-held company the identity of which is known to the Grand Jury, falsely stated that Max Infinity acquired shares “directly” from Company-1 in a private placement conducted in accordance with the securities laws. In truth, Max Infinity did not obtain shares directly from Company-1.

26. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” did not disclose to Max Infinity’s clients that many of the fund interests they were purchasing were subject to restrictions that Max Infinity had agreed to when purchasing fund interests from third-party broker-dealers and investment funds. For example, one agreement governing Max Infinity’s purchase of an interest in a fund

holding pre-IPO stock gave the selling fund absolute discretion to prohibit Max Infinity from transferring its fund interest to a client of Max Infinity's.

E. False Statements Concerning Max Infinity's Past Performance

27. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as "Jerry Sarabella," ENRICO CARINI, also known as "Ed Carini," and CANER OTAR, also known as "John Otar," falsely represented to clients that Max Infinity invested in the IPOs of companies in which it had not in fact invested. For instance, at one point during the defendants' scheme, Max Infinity's website displayed the logos of, among other companies, Facebook and Palantir, two companies that went public prior to Max Infinity's formation. On the Facebook logo, Max Infinity's website superimposed "+3081.67%," falsely representing to clients that Max Infinity investors saw returns of over 3,000% in investments in shares of Facebook.

28. Salespeople parroted the lies on the company's website about securities in which Max Infinity had supposedly invested. For instance, on or about November 14, 2022, the defendant ENRICO CARINI, also known as "Ed Carini," using an alias to conceal his true identity, directed a prospective client to Max Infinity's website, falsely stating, "you are going to see a lot of the companies that we helped bring public on that website, which were Palantir, companies like Airbnb, companies like Sweetgreen, companies like Rivian. You are going to see a bunch of companies on there that we helped bring to the market. And if you look at those companies -- I mean, if you look at Palantir, Palantir went from four to 45. You had two years to get out at around \$27 a share. And we were responsible for helping to bring that company public as well." On or about October 6, 2022, defendant CANER OTAR, also known as "John Otar," falsely told Individual-1, an individual whose identity is known to the Grand Jury, "We actually had AirBnB before they, you know, before they went public at 52. We had Palantir. We had

Rivian Motors.” Likewise, on or about October 11, 2022, defendant JOHN CANGIALOSI falsely suggested to Individual-2, an individual whose identity is known to the Grand Jury, that Max Infinity had invested in Palantir, SoFi, Facebook and Twitter.

F. Max Infinity’s False and Misleading High-Pressure Sales Tactics

29. The defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” engaged in high-pressure sales tactics designed to induce clients to invest, including by misrepresenting the nature of Max Infinity’s due diligence and the likelihood that clients would see a return on investment. Salespeople utilized scripts that falsely assured investors that the firm had conducted extensive due diligence and had specialized access to top deals. One script, titled “Close,” falsely stated, “We spend millions of dollars, sometimes tens of millions on research before we ever recommend an investment to a client.” Another script, titled “CANGE REBUTTALS,” referring to CANGIALOSI, falsely touted that Max Infinity was offering the “largest IPO in history and I gotta believe, when this comes public around \$450-\$500/share and I have it for you cheap at \$140 you will be very happy.” Still another script falsely promised that investing with Max Infinity “gives you access to some of the top information and deals on the street” and that “to Wall Street insiders[,] we are known as the firm that has been making their clients money hand over first [sic].” In truth, Max Infinity had never returned profits on any client investments.

G. The Defendants' Steps to Conceal their Criminal Scheme

30. The defendants JOHN CANGIALOSI, PETER GIRGIS and GENE SARABELLA, also known as “Jerry Sarabella,” took steps during the course of the criminal scheme to avoid detection and discourage witnesses from coming forward against them. For instance, in or about January 2022, CANGIALOSI, GIRGIS and SARABELLA caused the deletion of most employees’ company email addresses and discouraged employees from communicating with prospective investors in writing. On or about September 6, 2022, in connection with concerns about a potential government investigation of Max Infinity, CANGIALOSI informed salesmen that they would be fired if they did not bring their concerns directly to him, GIRGIS and SARABELLA, adding, “[***] that rat stuff.” He added, “I don’t like the feeling that I, I have hawks, all over me, looking to f[***] me. I feel like I have a few moles in here and I’m gonna get to the bottom of it, because I know a lot of people on the other side that they are talking to and talking about, and some people that they know I don’t know.”

COUNT ONE

(Conspiracy to Commit Securities Fraud)

31. The allegations contained in paragraphs one through 30 are realleged and incorporated as if fully set forth in this paragraph.

32. In or about and between May 2021 and August 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, did knowingly and willfully conspire to use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of

Federal Regulations, Section 240.10b-5, by (i) employing one or more devices, schemes and artifices to defraud; (ii) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in one or more acts, practices, and courses of business which would and did operate as a fraud and deceit upon investors and prospective investors in fund interests offered by Max Infinity, in connection with the purchase and sale of fund interests offered by Max Infinity, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, contrary to Title 15, United States Code, Sections 78j(b) and 78ff.

33. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, did commit and cause the commission of, among others, the following:

OVERT ACTS

a. On or about August 10, 2021, in response to a message from a Max Infinity salesperson about the company’s registration status, SARABELLA sent the salesperson a link to a website purporting to be an SEC webpage for Max Infinity and added, “If we’re on the sec website that shows that we[?]re regulated[.] I’m not really sure what more else els [sic] would want[.]”

b. On or about April 7, 2022, CARINI, on a recorded phone call, told Victim-1, an individual whose identity is known to the Grand Jury, that Max Infinity was “registered with the SEC.”

c. On or about May 20, 2022, CANGIALOSI, GIRGIS and SARABELLA agreed to and did charge an investor the equivalent of \$140 per share for a particular pre-IPO company, despite having just purchased those shares at a price of approximately \$71.84.

d. On or about September 3, 2022, GIRGIS directed CARINI to send to an investor a link to a website purporting to be an SEC webpage for Max Infinity.

e. On or about September 6, 2022, CANGIALOSI informed Max Infinity salespeople that they would be fired if they did not bring concerns about the company directly to him, GIRGIS and SARABELLA, adding, “[***] that rat stuff.”

f. On or about October 6, 2022, OTAR, on a recorded phone call, falsely told Individual-1 that Max Infinity had sold Airbnb stock to its clients prior to Airbnb’s IPO.

g. On or about October 11, 2022, SARABELLA advised Individual-2, who was known to SARABELLA as a prospective purchaser of a fund interest issued by Max Infinity, that Max Infinity did not earn commissions on investors’ investments.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(Conspiracy to Commit Wire Fraud)

34. The allegations contained in paragraphs one through 30 are realleged and incorporated as if fully set forth in this paragraph.

35. In or about and between May 2021 and August 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as

“John Otar,” together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud investors and prospective investors in fund interests offered by Max Infinity, and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT THREE
(Securities Fraud)

36. The allegations contained in paragraphs one through 30 are realleged and incorporated as though fully set forth in this paragraph.

37. In or about and between May 2021 and August 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, did knowingly and willfully use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing one or more devices, schemes and artifices to defraud; (b) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (c) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon one or more

investors and prospective investors in fund interests offered by Max Infinity, in connection with the purchase and sale of fund interests offered by Max Infinity, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT FOUR
(Investment Adviser Fraud)

38. The allegations contained in paragraphs one through 30 are realleged and incorporated as if fully set forth in this paragraph.

39. In or about and between May 2021 and August 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, did knowingly and willfully use and cause to be used, the mails and means and instrumentalities of interstate commerce, directly and indirectly: (a) to employ one or more devices, schemes, and artifices to defraud clients and prospective clients of Max Infinity; (b) to engage in one or more transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients of Max Infinity; and (c) to engage in one or more acts, practices, and courses of business that were fraudulent, deceptive, and manipulative.

(Title 15, United States Code, Sections 80b-6, 80b-14 and 80b-17; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT FIVE
(Money Laundering Conspiracy)

40. The allegations contained in paragraphs one through 30 are realleged and incorporated as if fully set forth in this paragraph.

41. In or about and between May 2021 and August 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN CANGIALOSI, PETER GIRGIS, GENE SARABELLA, also known as “Jerry Sarabella,” ENRICO CARINI, also known as “Ed Carini,” and CANER OTAR, also known as “John Otar,” together with others, did knowingly and intentionally conspire to engage in monetary transactions, to wit: deposits, withdrawals, and transfers of funds and monetary instruments, in and affecting interstate commerce, by, through and to one or more financial institutions, in criminally derived property that was of a value greater than \$10,000 and that was derived from one or more specified unlawful activities, to wit: conspiracy to commit securities fraud, contrary to Title 18, United States Code, Section 371, and fraud in the sale of securities, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, all contrary to Title 18, United States Code, Section 1957(a).

(Title 18, United States Code, Sections 1956(h) and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE, TWO AND THREE

42. The United States hereby gives notice to the defendants that, upon their conviction of any of the offenses charged in Counts One, Two and Three, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to

forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

43. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNT FIVE

44. The United States hereby gives notice to the defendants that, upon their conviction of the offense charged in Count Five, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(1), which requires any person convicted of such offense to forfeit any property, real or personal, involved in such offense, or any property traceable to such property.

45. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

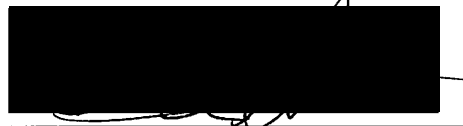
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(1) and 982(b)(1); Title 21, United States Code, Section 853(p))

A TRUE BILL



FOREPERSON



BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK