

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC, et al.,

Reorganized Debtors.¹

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

**NOTICE OF FILING OF ANNUAL REPORT OF TRIBAL ABATEMENT FUND
TRUST II PURSUANT TO TRIBAL ABATEMENT FUND TRUST II AGREEMENT**

PLEASE TAKE NOTICE that, in accordance with Section 2.4 of the Tribal Abatement Fund Trust II (“**TAFT II**”) dated as of June 26, 2022 (the “**Trust Agreement**”), Mary L. Smith, Kevin K. Washburn, and Dr. Kathy Hopinkah Hannan in their capacity as the TAFT II Trustees (collectively, the “**Trustees**”), have filed with this Court an annual report for the period ended December 31, 2022 (the “**Annual Report**”) audited by the Independent Auditors along with an opinion of the Independent Auditors as to the fairness in all material respects of the special-purpose financial statements contained in the Annual Report (the “**Opinion**”).² A copy of the Annual Report and a copy of the Opinion are attached hereto as **Exhibit 1**.

¹ A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtors’ mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Trust Agreement.

PLEASE TAKE FURTHER NOTICE that in accordance with Section 2.5 of the Trust Agreement, the Trustees are required to file with this Court a report on the Approved Tribal Opioid Abatement Uses during the period covered by the Annual Report. For the period ended December 31, 2022, there were no distributions by TAFT II and, accordingly, no Approved Tribal Opioid Abatement Uses. The Trustees expect to file with this Court, on or before April 30, 2024, a first report on the Approved Tribal Abatement Uses for the calendar year 2023.

DATED: April 26, 2023

MORRIS JAMES LLP

/s/ Jeffrey R. Waxman
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Counsel to TAFT II Trustees

EXHIBIT 1
(TAFT II 2022 Annual Report and Opinion)

TAFT II

Audited Financial Statements -Modified Cash Basis

For the period from June 16, 2022 (Inception)
through December 31, 2022

TAFT II

Audited Financial Statements - Modified Cash Basis
For the period from June 16, 2022 (Inception) through December 31, 2022

TAFT II

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Independent Auditor's Report

Trustees
TAFT II
Washington, DC

Opinion

We have audited the modified cash basis financial statements of TAFT II (the Trust), which comprise the statements of assets, liabilities and net assets - modified cash basis as of December 31, 2022, and the related statement of changes in net assets and statement of cashflows - modified cash basis for the period from June 16, 2022 (inception) through December 31, 2022, and the related notes to the modified cash basis financial statements.

In our opinion, the accompanying modified cash basis financial statements present fairly, in all material respects, the net assets of the Trust as of December 31, 2022 and the changes in net assets and cashflows for the period from June 16, 2022 (inception) through December 31, 2022, in accordance with the modified cash basis of accounting described in Note 2 to the modified cash basis financial statements.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Modified Cash Basis Financial Statements* section of our report. We are required to be independent of the Trust and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter - Basis of Accounting

We draw attention to Note 2 of the modified cash basis financial statements which describes the basis of accounting. As described in Note 2, the accompanying modified cash basis financial statements were prepared by the Trust on the modified cash basis of accounting which is a basis of accounting other than accounting principles generally accepted in the United States of America. As a result, the modified cash basis financial statements may not be suitable for another purpose. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Modified Cash Basis Financial Statements

Management is responsible for the preparation and fair presentation of the modified cash basis financial statements in accordance with the modified cash basis of accounting as described in Note 2 to the modified cash basis financial statements. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of modified cash basis financial statements that are free from material misstatement, whether due to fraud or error.

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In preparing the modified cash basis financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Trust's ability to continue as a going concern within one year after the date that the modified cash basis financial statements are issued or available to be issued.

Auditor's Responsibilities for the Audit of the Modified cash basis Financial Statements

Our objectives are to obtain reasonable assurance about whether the modified cash basis financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the modified cash basis financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the modified cash basis financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the modified cash basis financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Trust's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the modified cash basis financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Trust's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.



Other Information Included in the Annual Report

Management is responsible for the other information included in the annual report. The other information comprises the annual report and account of the Trust for the period from June 16, 2022 (inception) through December 31, 2022 but does not include the modified cash basis financial statements and our auditor's report thereon. Our opinion on the modified cash basis financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the modified cash basis financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the modified cash basis financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

BDO USA, LLP

McLean, Virginia
April 1, 2023

Financial Statements - Modified Cash Basis

TAFT II

Statements of Assets, Liabilities and Net Assets - Modified Cash Basis

December 31, 2022

Assets

Cash and cash equivalents	\$	4,789,565
Interest receivable		14,917

Total assets 4,804,482

Net assets \$ 4,804,482

See accompanying notes to the modified cash basis financial statements.

TAFT II**Statement of Changes in Net Assets - Modified Cash Basis**

For the period from June 16, 2022 (inception) through December 31, 2022

Additions

Funding	\$ 5,357,220
Interest income	65,025

Total additions	5,422,245
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Deductions

Operating expenses	617,763
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Increase in net assets	4,804,482
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Net assets

Beginning of the year	-
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End of the year	\$ 4,804,482
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See accompanying notes to the modified cash basis financial statements.

TAFT II**Statement of Cash Flows - Modified Cash Basis**

For the period from June 16, 2022 (inception) through December 31, 2022

Cash flows from operating activities:

Increase in net assets	\$ 4,804,482
Adjustments to increase in net assets to net cash provided by operating activities:	
Interest receivable	(14,917)
Net cash provided by operating activities	4,789,565
Net increase in cash	4,789,565
Cash and cash equivalents at the beginning of the period	-
Cash and cash equivalents at the end of the period	\$ 4,789,565

See accompanying notes to the modified cash basis financial statements.

TAFT II

Notes to the Modified Cash Basis Financial Statements

1. Description and Funding of the Trust

TAFT II (the Trust) was formed and became effective on June 16, 2022 pursuant to the Fourth Amended Joint Plan of Reorganization (with Technical Modifications) of Mallinckrodt plc and its Debtor Affiliates (Mallinckrodt) under Chapter 11 of the Bankruptcy Code, dated February 18, 2022 (the Plan). The Trust is intended to qualify as a “qualified settlement fund” within the meaning of Section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under Section 468B of the IRC, and to the extent permitted by law, for state and local income tax purposes.

The Plan provides, *inter alia*, for the establishment of an Opioid Creditor Trust, as defined, with respect to Tribal Opioid Claims, as defined. As of the Effective Date, defined as June 16, 2022, any and all liability of the Debtors for any and all Tribe Opioid Claims shall automatically be channeled to and assumed by the Trust.

In accordance with the Tribal Abatement Fund Trust II Agreement (the Trust Agreement), the Trust shall (i) hold, manage and invest all funds and other Trust Assets received by the Trust from the Opioid MDT II (MDT II) for the benefit of the beneficiaries of the Trust; (ii) hold and maintain the TAFT II Operating Reserve; (iii) administer, process, and resolve all Tribe Opioid Claims in accordance with the TAFT II Trust Distribution Procedures (TDP); and (iv) pay all TAFT II Operating Expenses.

The Trust is funded with the consideration prescribed under the terms of the Plan through MDT II (also created under the Plan). Funds will be paid by Mallinckrodt to the MDT II and MDT II will make distributions to TAFT II and other public and private creditor trusts. The MDT II consideration to be distributed to TAFT II is comprised of initial and deferred cash payments from Mallinckrodt, certain Warrants, and certain other non-cash assets as set forth under the Plan. In general, the recoveries and the timing of proceeds to TAFT II from such non-cash assets are uncertain at this time.

In general, TAFT II’s aggregate consideration (as defined in the Plan) will be comprised of the following:

- a) 2.9% of the first \$625 million received on account of the Public Opioid Creditor Share Distributable Value,
- b) 2.95% of amounts received in excess of \$625 million and up to and including \$1.25 billion on account of the Public Opioid Creditor Share Distributable Value.
- c) 3.0% of amounts received in excess of \$1.25 billion on account of the Public Opioid Creditor Share Distributable Value.

The initial cash distribution from MDT II was received by the Trust on June 17, 2022 in the amount of \$5,357,220. Future cash received from MDT II will be recorded when received.

On December 8, 2022, the Warrants were monetized and a Trust affiliate, the Tribal Opioid Abatement Fund LLC, expects to receive the cash proceeds associated with the monetization of these Warrants in 2023. The anticipated cash proceeds of the monetization of the Warrants is approximately \$90,000.

TAFT II

Notes to the Modified Cash Basis Financial Statements

The Trust will make Abatement Distributions, as set forth in the Tribal Abatement Fund Trust II Agreement, and in accordance with the TAFT II TDP, which provides for the Tribe Beneficiaries and Tribal Allocation Percentages. No Abatement Distributions were made during the period from June 16, 2022 (inception) through December 31, 2022.

2. Significant Accounting Policies

Basis of accounting

The Trust's policy is to prepare its financial statements on a modified cash basis, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (U.S. GAAP). The modified cash basis methods include the following:

- Assets are generally recorded when they are received by the Trust and expenses are generally recorded when the invoice is received from the vendor. The Trust records interest income when earned, and accordingly records an asset for interest receivable.
- Future fixed liabilities under contractual obligations and other agreements entered into by the Trust are recorded as deductions from net assets in the same period that the invoice for such contractual obligations or agreements are received by the Trust. Under GAAP, liabilities and contractual obligations are recorded over the period that is benefited by the underlying contract or agreement.
- The full amounts of abatement distributions will be recorded in the period in which the abatement distributions are paid. Under GAAP, a liability would be recorded for an estimate of the total abatement distributions to be made in accordance with the Trust Agreement and the TDP.
- Payments for services to be received over an extended period in the future are expensed as paid. Under GAAP, an asset would be recorded and amortized over the period in which the related benefits are received.
- Income tax expense payments or refunds, when applicable, will be recorded when paid or received. Under GAAP, a provision for income taxes is recorded based upon income reported for financial statement purposes, and federal and state income taxes both currently payable and changes in deferred taxes due to differences between financial reporting and tax bases of assets and liabilities.

Use of estimates

The preparation of financial statements in conformity with the modified cash basis described above requires the Trust to make estimates and assumptions that affect the reported amounts of certain assets and liabilities and the disclosures of contingent assets and liabilities at the date of the modified cash basis financial statements, as well as the reported amounts of additions and deductions to the net assets during the reporting period. Actual results could differ from those estimates.

TAFT II

Notes to the Modified Cash Basis Financial Statements

Cash equivalents

The Trust considers all highly liquid instruments with original maturities of three months or less to be cash equivalents.

Operating expenses

Operating expenses of the Trust are paid from the net assets when invoices are received.

Income taxes

The Trust is classified as a Qualified Settlement Fund pursuant to the Internal Revenue Code and Regulations thereunder (the Code). As a result, the Trust is subject to federal income taxes based on modified gross income, as defined by the Code. In the opinion of the Trustees and advisors, the Trust is not subject to state income taxes and, therefore, the modified cash basis financial statements do not include any provision or liability for state income taxes.

The Trust records income tax expense (or benefit) associated with amounts payable (or receivable) under current federal income taxes, and does not record a provision for (or benefit from) deferred taxes. Accordingly, there is no provision for deferred taxes associated with any future benefit from the potential use of net operating loss carryforwards to reduce taxable income in future years.

As of December 31, 2022 the Trust has no income taxes payable or receivable. The Trust generated approximately \$553,000 in net operating losses for the period from June 16, 2022 (inception) through December 31, 2022.

In accordance with authoritative guidance on accounting for uncertainty in income taxes issued by the Financial Accounting Standards Board (the FASB), management has evaluated the Trust's tax positions and has concluded that the Company has taken no uncertain tax positions that require adjustment to the modified cash basis financial statements to comply with the provisions of this guidance.

Risks and uncertainties

Certain of the Trust's assets are exposed to credit risk. Cash and cash equivalents are maintained at financial institutions and, at times, balances may exceed federally insured limits. The Trust has never experienced any losses related to these balances. Amounts on deposit in excess of federally insured limits at December 31, 2022, approximate \$4.4 million.

3. Trustees' Fees

The Trust Agreement describes the compensation to be paid to the Trustees for their services, including out of pocket costs and expenses. During the period from June 16, 2022 (inception) through December 31, 2022, the Trust paid a total of \$315,000 in Trustee fees and expenses.

TAFT II

Notes to the Modified Cash Basis Financial Statements

4. Contingent Liabilities

The Plan Documents (as defined in the Plan) subject the Trust to certain reimbursement and indemnification obligations that may result in future claims against the Trust. The probability of such claims cannot be reasonably determined. The Trust has obtained insurance for purposes of supporting its obligation to indemnify the Trustees.

5. Subsequent Events

The Trust has evaluated its December 31, 2022 modified cash basis financial statements for subsequent events through April 1, 2023, the date the modified cash basis financial statements were available to be issued. The Trust is not aware of any subsequent events which would require recognition or disclosure in the modified cash basis financial statements.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC, et al.,

Reorganized Debtors.¹

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2023, I caused to be filed with the Court electronically, and I caused to be served a true and correct copy of the *Notice of Filing of Annual Report of Tribunal Abatement Fund Trust II Pursuant to Tribal Abatement Fund Trust II Agreement* upon the parties that are registered to receive notice via the Court's CM/ECF notification system.

/s/ Jeffrey R. Waxman
Jeffrey R. Waxman (DE Bar No. 4159)

¹ A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors' claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtors' mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.