UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE EASTERLY ROCMUNI HIGH INCOME MUNICIPAL BOND FUND	:	No. 25-CV-6028-DLC

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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PRELIMINARY STATEMENT

The securities laws do not "provide investors with broad insurance against market losses." *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 345 (2005). Yet that is exactly what Plaintiff Richard Fulton seeks here. Having already allowed Plaintiff two opportunities to amend, warning that it would be "unlikely" Plaintiff would "be granted any further opportunities to amend," the Court should now dismiss his complaint with prejudice. (ECF No. 68.)

Plaintiff claims Defendants misled him and other high-yield bond fund investors. But they got what they bargained for when they accepted more risk in exchange for higher returns. Plaintiff, who "held senior roles in the investment and asset management industries" (ECF No. 54-5), invested in Principal Street High Income Municipal Fund ("Principal Street Fund"), which specifically warned that this fund held mainly "junk bonds." (Exh-4, at 2.)[1] Since Plaintiff invested in 2022 until June 2025, the fund has had the "highest" yield of its peers (Exh-3, at 5), nearly double typical municipal bond yields (Exh-37, at 4). This fund and its successor, Easterly RocMuni High Income Municipal Bond Fund ("Easterly Fund"; together, the "Funds"), expressly cautioned that they held "highly speculative" and "defaulted securities." (ECF No. 98, Second Am. Compl. ("SAC"), ¶190.) The Funds advised that they "may need to sell" assets "at significantly reduced prices" and that securities could "become illiquid." (SAC ¶174.) And the Funds warned investors "could lose all or a portion of [their] investment." (Exh-4, at 3.) A December 2023 *Morningstar* article emphasized the "warning sign" that the Principal Street Fund paid the "highest" yield of its peers and highlighted its substantial holdings of "bonds in default" and "[r]isky nonrated" bonds. (Exh-3, at 4-5.) Because of the disclosed risks faced by investors

[1] "Exh" refers to exhibits to the accompanying Declaration of David M.J. Rein.

in the Fund, *Morningstar* sounded the alarm about potential "serious outflows" and "pain." (Exh-3, at 8.)

In June 2025, in the wake of extraordinary bond market volatility, Easterly Fund suffered a significant asset sell-off and Net Asset Value ("NAV") decline. (SAC ¶11.) Despite having enjoyed outsized yields for three years, Plaintiff sued under the federal securities laws and claimed that investors were misled by everyone involved: the Funds' registrants, trustees, officers, investment advisers, and distributors. But as *Dura* teaches, investors have no basis to sue when their choice to take higher risks for greater returns backfires. Plaintiff's claims should be dismissed on multiple independent grounds:

First, Plaintiff alleges no material misstatement (Counts I-V). Plaintiff claims the Funds misrepresented that they would not hold more than 15% of their net assets in "illiquid investments," mirroring the requirements of an SEC Rule 17 C.F.R. §270.22e-4(b)(1)(iv)(A) ("Rule 22e-4" or the "Rule"). But neither Defendants' statements, nor the Rule, stated that illiquid assets may never exceed 15%, requiring only a "plan[]" to return below in a "reasonable period." 17 C.F.R. §270.22e-4(b)(1)(iv)(A). Nor was any investor misled: the Funds repeatedly warned of liquidity risks, including the risk that they "may need to sell securities at significantly reduced prices." (Exh-4, at 5.) And the Funds' assessment of asset illiquidity was an inactionable opinion given that Plaintiff has not pled Defendants "'did not hold the belief… professed.'" *Tongue* v. *Sanofi*, 816 F.3d 199, 210 (2d Cir. 2016). Plaintiff is left to claiming that Defendants' liquidity assessments were wrong because they differ from the "factors and attributes" devised by Plaintiff after the fact. (SAC ¶¶81-87.) But Plaintiff does not allege the Funds' holdings were illiquid under any standard promulgated by the SEC or stated in Defendants' disclosures.

Plaintiff also claims Defendants' statements about "valuation procedures" were misleading but he does not assert Defendants breached their procedures. (SAC ¶184.) Defendants' policy descriptions are not actionable because they did not guarantee "satisfactory compliance." *Singh* v. *Cigna Corp.*, 918 F.3d 57, 63 (2d Cir. 2019). Plaintiff alleges Defendants misstated asset values, but those hindsight-based conclusions challenge valuations of "nationally recognized bond pricing services," which Plaintiff does not allege Defendants disbelieved. (SAC ¶183.) Plaintiff tries to reframe his claims as failure to disclose Defendants' purported mismanagement of illiquidity and valuations, but absent any "affirmative misrepresentation, allegations of 'garden-variety mismanagement, such as managers failing to... adequately inform themselves' do not state a claim under federal securities laws." *In re Duke Energy Corp. Sec. Litig.*, 282 F. Supp. 2d 158, 160 (S.D.N.Y. 2003), *aff'd*, 113 F. App'x 427 (2d Cir. 2004).

Plaintiff claims that Defendants misled investors when stating "[t]he Adviser does not expect that" purchasing defaulted securities "will be a significant investment strategy." (SAC ¶190.) But Plaintiff alleges no security was in default when purchased and provides no objective measure to determine whether a strategy is "significant." Terms like "significant" are "too vague" to be actionable as a matter of law. *In re Micro Focus Int'l Plc Sec. Litig.*, 2020 WL 5817275, at *6 (S.D.N.Y. Sept. 29, 2020).

Second, Plaintiff's Securities Act of 1933 ("Securities Act") claims (Counts I-III) are time-barred. The one-year limitations period runs from when plaintiffs are on inquiry notice. *See* 15 U.S.C. §77m. More than a year before Plaintiff filed suit, in December 2023, *Morningstar* warned of the same risks at Principal Street Fund that Plaintiff now claims were hidden. (Exh-3 at 1.) Based on its review of the Fund's challenged disclosures to investors, including Plaintiff,

Morningstar cautioned that the Fund could face "problems" "were it to try to liquidate" quickly and that it held an undue "concentration" of "defaulted bonds." (Exh-3, at 1, 4.)

Third, Plaintiff's proxy claims under the Securities Exchange Act of 1934 ("Exchange Act") fail as a matter of law (Counts IV-V). Easterly Fund's September 5, 2024 Joint Proxy and Registration Statement ("Proxy") sought approval of a reorganization under which it would acquire the "assets and liabilities" of Principal Street Funds. (Exh-15, Proposal at 1.) But statements about the Funds' investment strategies and risks were not the required "essential link" in persuading shareholders to vote "FOR" reorganization because they were to remain unchanged: both Funds invested in the "same types of securities" with "substantially similar principal investment strategies." (Exh-15, Proposal at 1.) Nor has Plaintiff pled loss causation: he concedes that shareholders received Easterly Fund shares "equal in total value" to their Principal Street Funds shares. (SAC ¶51.)

Finally, Plaintiff's "control person" claims fail because no primary violation has been alleged. Moreover, Plaintiff has not pled Section 15 claims against Principal Street Partners, Easterly Investment Partners or Messrs. Pulire and Willis, none of whom signed a challenged registration statement (Count III). Nor can Plaintiff assert Section 20(a) claims against Principal Street Partners, Easterly Investment Partners, or Messrs. Pulire and Willis where the complaint makes no "concrete allegations" about their "activities in connection with" the Proxy (Count V). *In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731, 771 (S.D.N.Y. 2017).

BACKGROUND

A. The Parties.

Plaintiff Richard Fulton, an investor in Principal Street Fund shares, asserts claims on behalf of a putative class of investors in the Funds from July 29, 2022 through June 12, 2025 ("Class Period"). (SAC ¶1.)

Principal Street Fund, an open-end mutual fund, was formed on September 15, 2017.[2] (Exh-8, at 1.) Defendant Managed Portfolio Series Trust ("MPS Trust"), a Delaware statutory trust registered with the Securities and Exchange Commission ("SEC"), was the registrant for Principal Street Fund shares until October 2024. (SAC ¶26.) Defendants Robert Kern, David Massart and David Swanson[3] were independent Trustees of the MPS Trust from 2011 through October 2024. (Exh-11, at 21.) The Trustees were unaffiliated with Defendant Principal Street Partners (Exh-11, at 21), the Fund's investment adviser until October 2024. (SAC ¶28.) Defendant Brian Wiedmeyer was President and Principal Executive Officer, and Defendant Benjamin Eirich was Treasurer, Principal Financial Officer and Vice President of the MPS Trust. (Exh-11, at 23-24.) Defendant Quasar Distributors, LLC underwrote and distributed Principal Street Fund shares. (SAC ¶42.)

In October 2024, under a shareholder-approved reorganization plan ("Reorganization"), Principal Street Fund's assets and liabilities were transferred to Easterly Fund,

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[2] For purposes of this motion, "'the Court may consider documents that are referenced in the complaint,…, or matters of which judicial notice may be taken,'" *Gray* v. *Wesco Aircraft Holdings, Inc.*, 454 F. Supp. 3d 366, 383 (S.D.N.Y. 2020), *aff'd*, 847 F. App'x 35 (2d Cir. 2021), including documents "filed with the Securities and Exchange Commission," *In re Merrill Lynch & Co.*, 273 F. Supp. 2d 351, 356-57 (S.D.N.Y. 2003).

[3] Leonard Rush, an independent Trustee of the MPS Trust was formerly a defendant, but is now deceased. *See* ECF No. 84. Plaintiffs added Ann Clark Johnston-Rush, Executrix of the Estate of Leonard M. Rush, as a defendant in the Second Amended Complaint. (SAC ¶2.)

a "newly-created series of the" James Alpha Funds Trust d/b/a Easterly Funds Trust ("Easterly Trust"). (SAC ¶48.) Easterly Trust, an SEC-registered Delaware statutory trust, is the registrant for Easterly Fund shares. (SAC ¶27.) Following the Reorganization, Principal Street Fund shares were "cancelled" (Exh-15, Proposal at 1), and investors (including Plaintiff) received Easterly Fund shares "equal in total value" to their Principal Street Fund shares. (SAC ¶51. *See also* ECF No. 54-3.)

Defendant Easterly Investment Partners served as Easterly Trust's investment adviser and Defendant Easterly Securities served as "principal underwriter and distributor" for Easterly Fund. (SAC ¶¶29, 43.) Defendants Neil Medugno and A. Clayton Spencer have served as Easterly Trust's independent Trustees since 2021 and 2023, respectively. (Exh-13, at 15.) Defendants Darrell Crate and Michael Montague have served as President and Chairperson, and Treasurer of Easterly Trust, respectively, since 2021. (Exh-13, at 15.)

Defendants Troy Willis and Charlie Pulire served as portfolio managers to Principal Street Fund beginning in January 2021 and March 2022, respectively, and later became portfolio managers for Easterly Fund. (Exh-11, at 8.)

B. The Funds Extensively Warned That Investing In Junk Bonds Is Risky.

By December 2023, municipal bond benchmark yields were 2.57% to 3.34%. (Exh-37, at 4.) "[T]ypical" high-yield municipal bond funds then "had a 12-month trailing yield of 4.5%." (Exh-3, at 5.) Principal Street Fund offered "even higher yields" of "6.7%." (Exh-3, at 5.) *Morningstar* reported the Fund provided the "highest" yield among peers "every month since… 2018." (Exh-3, at 5.)

But those returns carried risks. Plaintiff acknowledges that "liquidity is famously limited" in the "high-yield market." (SAC ¶12.) The Funds extensively warned of that precise risk. They cautioned that they "invest the majority of [their] assets in debt securities that are rated

below investment grade (or 'junk bonds')." (Exh-4, at 2.) The Funds warned that junk bonds "are subject to additional risk factors such as increased possibility of default" and "illiquidity of the security." (Exh-4, at 4.) The Funds thus faced a "greater risk of loss" and warned investors they "could lose all or a portion of [their] investment." (Exh-4, at 3-4.) The Funds' risk warnings, repeated throughout the Class Period, are excerpted in Rein Declaration, Exhibit 2.

The Funds advised that they held "[m]unicipal securities," which "may have more liquidity risk than other fixed-income securities because they trade less frequently and the market… is generally smaller." (Exh-4, at 13.) The Funds also "purchase illiquid investments," including securities that are "not readily marketable" or "registered under the Securities Act." (Exh-4, at 13.) The Funds warned that securities could "become illiquid" and the Funds "may need to sell securities at significantly reduced prices." (SAC ¶174).

The Funds further explained they generally value securities "at their market price using valuations provided by independent pricing services" or, if "not available," through "fair value pricing" that "involves reliance on judgment." (Exh-4, at 15-16, 29.) They cautioned, however, that they could not provide "assurance[s] that the Fund[s] will obtain the fair value assigned to a security." (Exh-4, at 29.)

Because "[t]he secondary market for… junk bonds may be less liquid," the Funds warned there could be "an adverse effect on the market prices of and [the] Funds['] ability to arrive at a fair value for certain securities." (Exh-4, at 11.) Thus, "fair value… may be materially different (higher or lower) than the price of the security quoted or published by others, the value when trading resumes, and/or the value realized upon the security's sale." (Exh-4, at 16.) Moreover, illiquid investments, the Funds explained, "may be more difficult to value," and could

be sold "at a price that is lower than the price that could be obtained if" they were "more liquid." (Exh-4, at 14.)

The Funds informed investors that they "may also invest in defaulted municipal bonds." (Exh-4, at 2.) Although not "expect[ed]" to "be a significant investment strategy," the Funds cautioned that defaulted securities are "highly speculative and involve[] a high degree of risk, including the risk of substantial or complete loss of the Fund[']s investment." (SAC ¶190.)

The Funds additionally identified "Sector Emphasis Risk" as a "Principal Risk," warning that holding "securities of companies in the same or related businesses ('industry sectors'), if comprising a significant portion of the Fund's portfolio" could "adversely affect the value of the portfolio to a greater extent than if" the Fund was more "diversified." (Exh-4, at 12.)

Finally, the Funds disclosed the details of their holdings. Each Annual and Semi-Annual Report ("Reports") provided a "Schedule of Investments" identifying portfolio holdings, including their "Top Ten Holdings" with the percentage of net assets those holdings represented, among other information. (*See, e.g.*, Exh-24, at 11.) The Funds further disclosed holdings quarterly on SEC Form N-PORTs. (*See* Exh-27.) Investors could also freely access the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA"), to obtain "municipal securities data and disclosure documents." (Rein Decl. ¶5.)[4]

C. *Morningstar* Highlighted the Serious Risks of Principal Street Fund.

In November 2023, Principal Street Fund publicly disclosed that it was "unable" to timely file its Annual Report "due to complications" with "the valuation of certain municipal bonds held by" the Fund. (Exh-23, at 2.) The 2023 Annual Report later disclosed that "several"

[4] EMMA is a free searchable database of municipal securities operated by the MSRB. Notices of default are listed under "Event-Based Disclosures." (Rein Decl. ¶5.)

"securities were mispriced… resulting in" a "material" "overstatement of the Fund's net assets and net asset value." (Exh-24, at 55.)

On December 26, 2023, *Morningstar* detailed "Critical Lessons" from Principal Street Fund's mispricing.[5] (Exh-3, at 1, 7.) Citing the Fund's "difficulty valuing certain municipal bonds," *Morningstar* warned the Fund could encounter "problems" if it "tr[ied] to liquidate those positions quickly." (Exh-3, at 1.) Unlike "safe bet[]" municipal bond funds, *Morningstar* observed the Fund is "a different breed" focused on "private-sector project[]" bonds "not guarantee[d]" by the government. (Exh-3, at 2.) Some of these bonds offer "generous yields" but a "lack of ratings." (Exh-3, at 2.) *Morningstar* highlighted that the Fund's yields were the "highest every month since… 2018," cautioning that "[a] yield that high relative to a fund's peers, is almost always a warning sign." (Exh-3, at 5.)

Morningstar reported that 95.3% of the Fund's assets were "nonrated bonds,"—the second "highest" *Morningstar* "ever reported," besides a fund that "lost 70% in a day, and liquidated in the early 2000s." (Exh-3, at 3.) *Morningstar* added that the Fund was one of the "least diversified" "high-yield muni" funds "mak[ing] risk riskier," including because, in August 2023, "more than 18% of the Fund's portfolio" consisted of "bonds in default." (Exh-3, at 4.)

Morningstar concluded that "[t]he ultimate concern" was "any event that would make it hard for Principal Street to sell its bonds near their marked prices." (Exh-3, at 8.) A "liquidly challenged market," for example, could "cause… pain" and, "[e]ven under the best of

[5] Defendants offer the *Morningstar* article to "show that information… was publicly available" in "press articles," "not for the truth of the matters asserted therein." *Garber* v. *Legg Mason, Inc.*, 347 F. App'x 665, 669 (2d Cir. 2009).

circumstances… serious outflows could be a bigger problem." (Exh-3, at 8.) In the days following the *Morningstar* article, the Fund's NAV moderately declined.[6]

D. Principal Street Fund Shares Were Cancelled in the Reorganization.

On July 1, 2024, Easterly Trust issued the Proxy, seeking approval of the Reorganization to "transfer" Principal Street Fund "assets and liabilities" to Easterly Fund.[7] (Exh-15, Proposal at 1.) If approved, Principal Street Fund shares "w[ould] be cancelled" in exchange for Easterly Fund shares "equal to the value of" their Principal Street Fund shares. (Exh-15, Proposal at 1.)

The Proxy stated that the Funds "have the same investment objectives," "substantially similar principal investment strategies and invest in the same types of securities under the same portfolio management team. As a result, Principal risks associated with an investment in" either fund were "substantially similar." (Exh-15, Proposal at 1.) The Proxy included a registration statement issuing shares of Easterly Fund. (Exh-15, Proposal at 1.)

On September 30, 2024, Principal Street Fund shareholders approved the Reorganization, which was implemented on October 4, 2024. (Exh-16, at 6.)

E. Following Market Turbulence, Easterly Fund's NAV Declined.

In Spring 2025, municipal bonds experienced unusual volatility. On April 8, *Bloomberg* reported that municipal bonds experienced their "biggest daily decline since at least 1994" (Exh-31, at 1) and bond yields spiked (Exh-32, at 3). "On June 13, 2025," Easterly Fund's NAV "decline[d]… over 30% from the reported NAV" the prior day. (SAC ¶9.) By June 17,

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[6] *See* Exh-41. The court "'may take judicial notice of well-publicized stock prices….'" *In re FuBoTV Inc. Sec. Litig.*, 2024 WL 1330001, at *4 (S.D.N.Y. Mar. 28, 2024).

[7] The Joint Proxy Statement filed with the SEC on July 1, 2024 was amended on September 5, 2024. (SAC ¶17.v.)

2025, the NAV "dropped almost 50%" (SAC ¶11) following a "large selloff" of Fund assets, including "Purecycle bonds… for 50 cents on the dollar" that had "traded in February 2024 for 102" (SAC ¶12).

On December 29, 2025, Easterly Fund published "a Plan of Liquidation and Dissolution" under which "remaining assets" will be converted "into cash or cash equivalents" before being "distribute[d] pro rata to shareholders" other than assets necessary to "provide for any contingent liabilities." (Exh-28, at 1.) The "contingent liabilit[ies]" include this action, rendering it "not currently possible to predict when" the Fund will "begin liquidating distributions to shareholders." (Exh-28, at 1.)

F. Plaintiff's Claims.

In July 2025, Plaintiff and another shareholder filed suit. (ECF No. 1 (July 22, 2025); *Fulford* v. *James Alpha Funds Trust*, No. 25-cv-06102, ECF No. 1 (July 24, 2025).)

Plaintiff claims three 2022 and 2023 MPS Trust registration statements, and four 2024 Easterly Trust registration statements contained misstatements in violation of Securities Act §§11 and 12(a)(2). Plaintiff further alleges Easterly Trust's September 5, 2024 Proxy contained misstatements violating Exchange Act §14(a) and SEC Rule 14a-9. Plaintiff also asserts "control person" claims under Securities Act §15 and Exchange Act §20(a).

The Funds disclosed that they "may not acquire any illiquid investments, if immediately after the acquisition, [the Funds] would have invested more than 15% of [their] net assets in illiquid investments…." (SAC ¶169.) Plaintiff asserts that these disclosures were misleading because the Funds' "holdings of illiquid securities had already exceeded 15% of the Fund's net assets" throughout the proposed Class Period, rendering the 15% threshold not a "hypothetical, potential future, condition." (SAC ¶¶170, 173.) The disclosures Plaintiff

challenges are aligned with the SEC Rule requiring that funds not "acquire" or "invest more than 15% of" net assets in illiquid securities. 17 C.F.R. §270.22e-4(b)(1)(iv).

Plaintiff also claims Defendants' statements describing their valuation procedures were misleading because they were "materially defective." (SAC ¶184.) Plaintiff alleges the Funds' "assets were not being managed in a manner consistent with the liquidity and valuation requirements of an open-end mutual fund." (SAC ¶8.)

Plaintiff further asserts that Defendants' statements describing the Funds' "investment[s] in defaulted securities" were misleading for failing to disclose that this was a "significant or principal investment strategy." (SAC ¶¶149, 190-196.) Finally, Plaintiff alleges that Defendants' statements about the risks of investing in the same or related businesses should have disclosed that ten bond issuers were affiliated. (SAC ¶153.)

ARGUMENT

I. PLAINTIFF DOES NOT ALLEGE ANY MATERIAL MISSTATEMENT AS A MATTER OF LAW.

Pointing to Easterly Fund's June 2025 losses, Plaintiff conclusorily claims that statements Defendants made months or years earlier were false. But the securities laws do not permit Plaintiff to plead a "claim 'with the benefit of 20/20 hindsight' or base the claim on a 'backward-looking assessment' of the statement." *Ohio Pub. Emps. Ret. Sys.* v. *Discovery, Inc.*, 715 F. Supp. 3d 483, 495 (S.D.N.Y. 2024), *aff'd* 2024 WL 4647131 (2d Cir. Nov. 1, 2024).

To state a Securities Act claim under either Section 11 or Section 12, Plaintiff must allege a *material* misstatement. *See In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 360 (2d Cir. 2010) ("materiality" is "central to" Securities Act claims). Information is material only if a "reasonable investor" would view it as "having significantly altered the 'total mix' of information made available," *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976),

including "information 'in the public domain and facts known or reasonably available to the shareholders,'" *Goldschein* v. *Avangrid, Inc.*, 2025 WL 3707500, at *6 (S.D.N.Y. Dec. 22, 2025).

This Court must assess Defendants' statements "as a whole" and "consider whether the disclosures and representations, 'taken together and in context, would have misl[ed] a reasonable investor about the nature of the [securities].'" *In re ProShares Tr. Sec. Litig.*, 728 F.3d 96, 103 (2d Cir. 2013).

Here, Defendants' detailed risk warnings, "publicly available reports," *Ohio*, 715 F. Supp. 3d at 499, and "publicly known" information, *N.J. Carpenters Health Fund* v. *Residential Cap., LLC*, 2010 WL 1257528, at *7 (S.D.N.Y. Mar. 31, 2010), demonstrate that *none* of the challenged statements was misleading. Investors enjoying the Funds' "higher than… norm[al]" yields (Exh-3, at 5) were fully informed that they could "lose all or a portion of" their investment (Exh-4, at 3). Because the securities laws do not "provide investors with broad insurance against market losses," dismissal is required. *Dura*, 544 U.S. at 345.

A. The Funds' Liquidity Determinations Are Not Actionable.

Plaintiff claims Defendants made misstatements about illiquidity limits on the Funds. Plaintiff focuses on statements that a Fund "may not acquire any illiquid investments if, immediately after the acquisition, [the] Fund would have invested more than 15% of its net assets in illiquid investments that are assets." (SAC ¶74.) Plaintiff concedes that this "limitation on illiquid assets aligns with SEC regulations." (SAC ¶76, n.3.) In fact, Defendants' disclosures directly reference the SEC Rule. (*See, e.g.,* Exh-4, at 13-14 ("The Funds may purchase illiquid investments… The term 'illiquid investments' for this purpose means any investment… as determined pursuant to the provisions of Rule 22e-4 under the 1940 Act"); Exh-20, at 62 ("During the Reporting Period, the Fund's investments were monitored for compliance with the 15% limitation on illiquid investments pursuant to the Program and in accordance with Rule 22e-4").)

Defendants' statements about the illiquidity limits and 15% threshold thus mirror the Rule. Plaintiff's liability theory, however, misapprehends the Rule, as well as Defendants' statements based on the Rule, and ignores the Funds' clear risk warnings.

Rule 22e-4 requires Funds to "adopt and implement a written liquidity management program… reasonably designed to assess and manage… liquidity risk." 17 C.F.R. §270.22e-4(b). This includes "classify[ing] each" "portfolio investment[]," into liquidity categories ranging from "highly liquid" to "illiquid," "and taking into account relevant market, trading, and investment-specific considerations." *Id.* §270.22e-4(b)(1)(ii).[8] An "illiquid investment" is one "the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without… significantly changing the market value of the investment." *Id.* §270.22e-4(a)(8). *See also* SAC ¶76, n.3 (citing Rule 22e-4).

Consistent with Defendants' disclosures, the Rule prohibits a fund from "acquir[ing]" illiquid assets if it would cause illiquid assets to exceed "more than 15% of its net assets." 17 C.F.R. §270.22e-4(b)(1)(iv). If the threshold is exceeded, the fund must develop a "plan[] to bring its illiquid assets" "to or below 15%" "within a reasonable period," reporting to fund directors "each consecutive 30 day period thereafter." *Id.* §270.22e-4(b)(1)(iv)(A)–(B). The Funds thus adopted liquidity management programs and classified their assets by liquidity level. (*See* Exh-20, at 62.) None of Defendants' liquidity statements—which merely tracked the Rule—were misleading:

First, Defendants did not represent that the Funds would never exceed the 15% threshold. (SAC ¶¶171, 173.) Plaintiff challenges statements that the Funds "may not acquire any

[8] A fund should "review its portfolio investments' classifications, at least monthly," 17 C.F.R. §270.22e-4(b)(1)(ii), but reporting occurs quarterly, 17 C.F.R. §270.30b1-9.

illiquid investments if, immediately after the acquisition, [the] Fund would have invested more than 15% of its net assets in illiquid investments." (SAC ¶169.) But Defendants made no promise about future events. The Funds warned investors that "[l]iquid securities can become illiquid" (Exh-4, at 5) and that the Funds would "determine how to remediate… illiquid investments" (SAC ¶171) if holdings exceeded the 15% threshold. This complies with Rule 22e-4's requirement to implement a "plan" to bring illiquid investments below the 15% threshold within a "reasonable period."[9] 17 C.F.R. §270.22e-4(b)(1)(iv)(A). Plaintiff does not allege otherwise, and, tellingly, does not allege that, at "acquisition," any asset caused the Fund to exceed the threshold. No reasonable investor could understand the Funds (or the Rule) to guarantee the threshold would never be exceeded.

Effectively, by challenging Defendants' disclosures that mirror the Rule, Plaintiff is attempting to assert a claim for violation of Rule 22e-4. But Rule 22e-4 has no private right of action. *See In re Morgan Stanley & Van Kampen Mut. Fund Sec. Litig.*, 2006 WL 1008138, at *11 (S.D.N.Y. Apr. 18, 2006) ("there is no implied private right of action under provisions of the Investment Company Act containing no express private right"). Plaintiff cannot create a backdoor private right of action merely because the Funds, like other funds, disclosed that they are bound by SEC liquidity rules.

Second, Plaintiff's theory that the Funds exceeded the 15% threshold throughout the Class Period is based on Plaintiff's opinion that eleven bonds comprising between 15.01% and 21.80% of the Funds' NAV supposedly "embod[ied] illiquid bonds." (SAC ¶¶93-94.) Because these bonds sold at reduced valuations in June 2025, Plaintiff presumes they "were illiquid" for

[9] *See* Exh-24, at 61 ("Pursuant to Rule 22e-4…, Managed Portfolio Series… has adopted and implemented a written liquidity risk management program… that includes policies and procedures reasonably designed to comply with the requirements of Rule 22e-4….").

years. (SAC ¶96.) The June 2025 sales, however, are "'subsequent event[s],'" not the necessary contemporaneous facts showing that the statements were false when made. *Thomas* v. *Citigroup Glob. Mkt. Holdings Inc.*, 2022 WL 1051158, at *14 (S.D.N.Y. Mar. 1, 2022). Plaintiff must plead the "falsity of 'any part of the registration statement[] *when such part became effective*." *Jiajia Luo* v. *Sogou, Inc.*, 465 F. Supp. 3d 393, 406 (S.D.N.Y. 2020) (emphasis added). "It is not sufficient" to argue that "some subsequent event" made the statements "no longer accurate." *Luo*, 465 F. Supp. 3d at 406. *See Hawes* v. *Argo Blockchain plc*, 2024 WL 4451967 (S.D.N.Y. Oct. 9, 2024) ("an adverse event… following the making of a statement to the market, … is an insufficient basis from which to infer that the statement was false when made"). Plaintiff's "hindsight" theory thus "fail[s] to state a viable" claim.[10] *Charter Twp. of Clinton Police & Fire Ret. Sys.* v. *KKR Fin. Holdings LLC*, 2010 WL 4642554, at *1 (S.D.N.Y. Nov. 17, 2010).

Moreover, the SEC has not adopted the "economic factors and attributes" on which Plaintiff relies to label eleven of the bonds illiquid. (SAC ¶¶81-87.) Had Rule 22e-4 done so, it would upend the fund industry. For example, one purported "factor" is whether bonds are "municipal bonds held by mutual funds"—this assumes that all municipal bonds are intrinsically illiquid, which is wholly unsupported. (SAC ¶86.) Unlike Plaintiff's self-invented checklist, Rule 22e-4 requires only that the Fund assess whether sales could occur within "seven calendar days" under "current market conditions" without "significantly changing" the "market value." 17 C.F.R.

[10] That another eleven bonds sold after the Class Period at reduced valuations is likewise impermissible hindsight. (SAC ¶97.) Plaintiff also claims that the 3.23% to 16.08% of assets classified as "Level 3" were "illiquid." (SAC ¶100.) But as Plaintiff concedes, "Level 3" is a measure of "fair value," not liquidity. (SAC ¶90.)

§270.22e-4(a)(8). Plaintiff makes no attempt to allege how any liquidity classification failed that SEC standard.[11]

Third, Defendants repeatedly warned of significant liquidity risks. For example, they cautioned:

> *Liquidity Risk*. There may be no willing buyer of the Fund's portfolio securities and the Fund may have to sell those securities at a lower price or may not be able to sell the securities at all, each of which would have a negative effect on performance.

(Exh-18, at 17.) The Funds explained that the "junk bonds" "held by the Fund" are "speculative" and "subject to additional risk" including "illiquidity." (Exh-18, at 18.) The Funds also cautioned that "[m]unicipal securities" "may have more liquidity risk than other fixed-income securities because they trade less frequently and the market for municipal securities is generally smaller than many other markets." (Exh-18, at 44.) The Funds further warned:

> Difficulty in selling less liquid securities may result in sales at disadvantageous prices affecting the value of your investment…. If a significant amount of the Fund's securities become illiquid, the Fund… may need to sell securities at significantly reduced prices.

(Exh-18, at 19.)

Because Defendants "'warn[ed] of the exact risk that later materialized,'" Plaintiff's claims "fail[] as a matter of law." *Rubinstein* v. *Credit Suisse Grp. AG*, 457 F. Supp. 3d 289, 296 (S.D.N.Y. 2020); *see Yaroni* v. *Pintec Tech. Holdings Ltd.*, 600 F. Supp. 3d 385, 398

[11] Plaintiff alleges the Funds' holdings of illiquid exceeded 45% of net assets on a single occasion: May 31, 2025. (SAC ¶¶93, 101.) Plaintiff's calculation rests on his own idiosyncratic view of the liquidity of eleven bonds sold during the Class Period (SAC ¶¶94-96), eleven bonds sold "after the end of the Class Period" (SAC ¶97), and the value of the Funds' Level 3 assets (SAC ¶100). Falsity cannot be based on subjective, hindsight-based assertions like these. *See Hawes* v. *Argo Blockchain plc*, 2024 WL 4451967, at *3 (S.D.N.Y. Oct. 9, 2024) ("'Hindsight pleading'… is impermissible, as 'without contemporaneous falsity there can be no fraud.'").

(S.D.N.Y. 2022) (claims "fail… because [defendant] disclosed the risk at issue"); *Banco Safra S.A.-Cayman Islands Branch* v. *Andrade Gutierrez Int'l S.A.*, 2018 WL 1276847, at *4 (S.D.N.Y. Mar. 8, 2018) ("Defendants disclosed the precise risks that came to pass" so "'*no reasonable investor* could have been misled about the nature of the risk when he invested.'").

Plaintiff attempts to downplay the Funds' extensive warnings as "generic, boilerplate liquidity risk language." (SAC ¶176.) But Defendants could not have been clearer about the specific risks inherent in purchasing Fund securities. "Reading the Registration Statement[s] 'cover-to-cover,'" Defendants "could not have misled a reasonable investor about the nature of the… Fund and the risks associated with this complex financial product." *In re Proshares Tr. II Sec. Litig.*, 2020 WL 71007, at *7 (S.D.N.Y. Jan. 3, 2020) (Cote, J.). Rather, "[t]hese disclosures would lead a reasonable investor to know that the Fund's own conduct in purchasing" *id.*, "junk bonds" and "municipal securities," came with risks, including potential illiquidity and reduced sale prices.

Plaintiff also faults Defendants' warnings for disclosing a "hypothetical risk" of illiquidity when, supposedly, "a substantial portion of the portfolio was already illiquid." (SAC ¶176.) But, as described above, Plaintiff's position that assets were "already illiquid" rests on its subjective and retrospective approach, not illiquidity that actually had materialized under the standard set forth in the Rule and Defendants' disclosures.

Fourth, the Funds' liquidity classifications were opinions, not facts. As Judge Abrams recognized, "statements about what [defendants] 'think,' 'believe,' and '*expect*' to occur… are inactionable statements of opinion or belief." *In re Adient plc Sec. Litig.*, 2020 WL 1644018, at *17 (S.D.N.Y. Apr. 2, 2020) (emphasis added). Under Rule 22e-4, liquidity classifications inherently reflect judgments of when funds "reasonably expect[]" assets can be sold.

17 C.F.R. §270.22e-4(a)(8). This language is repeated in Defendants' registration statements. (*See, e.g.*, Exh-13, at 9 ("'illiquid investments'… means any investment that a fund reasonably expects cannot be sold… pursuant to… Rule 22e-4").)

The SEC itself made clear in its Adopting Release for Rule 22e-4 that liquidity classifications are opinions: "[L]iquidity classifications, similar to valuation- and pricing-related matters, inherently involve judgment and estimations by funds." Inv. Co. Liquidity Risk Mgmt. Programs, Securities Act Release No. 33-10233, Investment Company Act Release No. IC-32315, 115 SEC Docket 1372, 2016 WL 6023911, at *82 (Oct. 13, 2016). The SEC explained that funds may "classify the liquidity of similar investments differently, based on the facts and circumstances informing their analyses." *Id.*, 2016 WL 6023911, at *43. These variations "simply reflect[]… different views on liquidity based on considerations such as their assessment of various market, trading, and investment-specific factors, and the size of their position in a particular investment." *Id*. Because "liquidity can be difficult to estimate," the SEC recognized "that there is no agreed-upon measure of liquidity for all asset classes." *Id*.

Consequently, Defendants' statements about liquidity are inactionable unless Plaintiff pleads "either 'the speaker did not hold the belief she professed' or 'the supporting fact she supplied were untrue.'" *Sanofi*, 816 F.3d at 210. Plaintiff does not allege Defendants disbelieved their opinions—to the contrary, Plaintiff avers his claims are "not based on and do[] not sound in fraud." (SAC ¶¶208, 216, 243.) Nor does Plaintiff identify any untrue facts supporting the challenged liquidity determinations.

Fifth, to the extent Plaintiff frames his claims as Defendants purportedly failing to disclose that they mismanaged their liquidity risks, that is not actionable at all. (*E.g.*, SAC ¶8 ("the Fund's assets were not being managed in a manner consistent with the liquidity and valuation

requirements of an open-end mutual fund"). "[C]laims for corporate mismanagement are not actionable under securities laws." *In re Weight Watchers Int'l Inc. Sec. Litig.*, 504 F. Supp. 3d 224, 247 (S.D.N.Y. 2020). *See also Woolgar* v. *Kingstone Cos.*, 477 F. Supp. 3d 193, 240 (S.D.N.Y. 2020) ("well established that mismanagement is not actionable under the securities laws"); *Barilli* v. *Sky Solar Holdings, Ltd.*, 389 F. Supp. 3d 232, 251 (S.D.N.Y. 2019) ("Omissions concerning 'corporate mismanagement… are not actionable unless the non-disclosures render other statements by defendants misleading.'").

Finally, the Funds' liquidity risks were publicly and easily known. In December 2023, *Morningstar* warned of Principal Street Fund's "problems" "were it to try to liquidate [its] positions quickly." (Exh-3, at 1.) Plaintiff alleges the Funds held "high profile defaults" and distressed assets, including "Legacy Cares, the Proton International Alabama, LLC, and Ohio's Purecycle Technologies." (SAC ¶12.) By 2022, problems with each obligor were public. (*See* Exh-33, at 1 (Legacy Cares "fil[ed] for bankruptcy"); Exh-34, at 1 (Proton bonds "in technical or actual payment default"); Exh-35, at 5 (PureCycle is "a distressed debt story").) When supposedly withheld information is "publicly available" there is no cognizable claim. *In re Norfolk S. Corp. Bond/Note Sec. Litig.*, 2025 WL 641089, at *4 (S.D.N.Y. Feb. 27, 2025). *See SRM Glob. Fund L.P.* v. *Countrywide Fin. Corp.*, 2010 WL 2473595, at *9 (S.D.N.Y. June 17, 2010) ("'publicly available'" information renders "'purported misstatements immaterial'").

B. Plaintiff Alleges No Material Misstatement About Valuation.

None of Plaintiff's claims challenging Defendants' statements concerning valuation states a claim.

Most of the challenged statements concern Fund "valuation procedures," not any valuation's accuracy. (SAC ¶184.) Plaintiff challenges statements that Defendants used "nationally recognized bond pricing services," if available and, if unavailable, applied dealer

pricing and approved Board "procedures" for assessing "fair value." (SAC ¶183.) Because Plaintiff "does not allege that [Defendants] failed to undertake" these procedures "but merely" that the "system was 'inherently deficient,'" Plaintiff does not state a claim. *Ong.* v. *Chipotle Mexican Grill, Inc.*, 294 F. Supp. 3d 199, 232 (S.D.N.Y. 2018). *See Singh*, 918 F.3d at 63-64 (no reasonable investor assumes "simple and generic assertions about having 'policies and procedures'" guarantees "satisfactory compliance"); *Luo*, 465 F. Supp. at 409 (Defendants "provided no assurance[s]" that "procedures would be sufficient").

Plaintiff claims the Funds' valuation procedures were flawed because they did not consider episodic "odd lot" small-sized bond trades in 2024 and 2025. (SAC ¶¶106-135.) But this does not allege "misstatements or omissions of material fact"—it merely disputes Defendants' "opinion" regarding how to conduct a valuation. *Fait* v. *Regions Fin. Corp.*, 655 F.3d 105, 110 (2d Cir. 2011). "[D]etermination[s] of… 'fair value'… are not matters of objective fact" and necessarily "vary depending on the particular methodology and assumptions used." *Id.* at 110-11. Because valuations "are subjective" opinions, *id.* at 111, they are inactionable unless Plaintiff alleges that Defendants "'did not hold the belief… professed,'" or "'the supporting fact[s]… supplied were untrue'" *Sanofi*, 816 F.3d at 210. *See Lighthouse Fin. Grp.* v. *Royal Bank of Scotland Grp., PLC*, 902 F. Supp. 2d 329, 345-46 (S.D.N.Y. 2012) (dismissing Securities Act claims because "valuing complex, illiquid instruments... is not a straightforward exercise, and Plaintiffs do not allege that [defendant's] valuations were objectively false or that any Defendant disbelieved them").[12] Given that Plaintiff does not allege subjective disbelief or objective falsity, Plaintiff's second-guessing of valuation judgments does not state a claim.

[12] Further, the "market data" about odd-lot trade prices on which Plaintiff relies was available to any investor. (*See* Rein Decl. ¶5.)

Plaintiff also claims that Defendants' "nationally recognized bond pricing services" supplied "materially overstated valuations." (SAC ¶¶183-188.) According to Plaintiffs, "pricing services generally" do not consider "odd lot" transactions and therefore fail to "utilize all available" market data. (SAC ¶¶106-107, 188.) But the pricing services' valuations are opinion statements and Plaintiff does not allege that Defendants (or the pricing service) did not honestly believe them or that they misstated any objective facts. *See Sanofi*, 816 F.3d at 210. Moreover, Defendants made no representation that the pricing services would consider "odd lot transactions" or that they would consider "all available" data. Instead, the Funds disclosed that pricing services "utiliz[e] a range of" "inputs and assumptions." (SAC ¶185.) The Funds stated that the pricing service "may" use a range of "observable inputs" such as "quoted prices for the identical instrument on an inactive market, prices for similar instruments, interest rates, prepayment speeds, credit risk, yield curves, default rates and similar data." (Exh-24, at 48.) Plaintiff alleges nothing about the inputs relied on by the pricing services or how the pricing services or Funds departed from these valuation methods. Moreover, SEC Rule 2a-5 requires the Funds to establish a "process for approving, monitoring, and evaluating" pricing services, but does not mandate any particular method or inputs. 17 C.F.R. §270.2a-5(a)(4). Plaintiff does not assert that the Funds failed to comply with any of their disclosures or this SEC rule.

Plaintiff identifies only one asset that the Fund supposedly overvalued using fair-value procedures: Next Renewable Fuels, representing 3% of Easterly Fund's May 2025 holdings. (SAC ¶¶137-147.) Plaintiff claims Next Renewable was overvalued from "at least November 2023" (SAC ¶147) because the company failed to consummate a 2023 merger leading to the Fund marking down its valuation *after* the Class Period. (SAC ¶¶137-147.) Plaintiff makes the conclusory assertion that, because the anticipated merger counterparty was liquidated, the value of

Next Renewable must have been "zero," but provides no explanation for this assertion. (SAC ¶144.) In any event, Plaintiff does not allege that Defendants' valuation opinions about Next Renewable were not honestly held or misstated any objective facts.

Finally, Plaintiff claims two 2022 registration statements "failed to disclose valuation risk among the principal risks of investing in the Fund." (SAC ¶189.) In reality, under "Principal Risks," the Fund cautions "net asset value ('NAV') and investment return… will fluctuate," that "a security" may "be worth less than the price originally paid," and that "debt markets have experienced… valuation difficulties." (*See, e.g.*, Exh-2, at 3, 9.) It further warned that because "fair value pricing" is "subjective and variable," "fair value... may be materially different" than a published or quoted price. (Exh-6, at 28.)

C. Defendants' Statements About Investing In Defaulted Securities Are Not Actionable.

Plaintiff asserts it was misleading to state that "[t]he Adviser does not expect that [purchasing defaulted securities] will be a significant investment strategy." (SAC ¶190.) But the Second Amended Complaint contains no allegation that any bond was in default when purchased. (SAC ¶¶109-135.) In any event, Defendants warned that the Funds "may also invest in defaulted municipal bonds," and disclosed the accompanying "Defaulted Bonds Risk." (Exh-4, at 8, 12.) Defendants' disclosure cannot give rise to a cognizable claim. Whether an investment strategy is significant is too vague and unspecific to "express any objective fact." *In re Synchrony Fin. Sec. Litig.*, 988 F.3d 157, 173 (2d Cir. 2021).

Plaintiff alleges that the Funds' investments in defaulted securities "represented a significant portion of" Fund assets, between 10% and 35%, but, critically, does not claim that *any* bond was in default at the time it was acquired. (SAC ¶148.) Moreover, Plaintiff provides no objective measure of when an investment strategy is "significant." Courts routinely reject claims

based on similarly "broad and general" statements. *N.Y. City Pub. Pension Funds* v. *Coupang, Inc.*, 2025 WL 2613650, at *12 (S.D.N.Y. Sept. 10, 2025). *See In re Micro Focus Int'l Plc Sec. Litig.*, 2020 WL 5817275, at *6 (S.D.N.Y. Sept. 29, 2020) ("'currently investing significant amounts'… is too vague" and inactionable); *Ret. Bd. of Policemen's Annuity & Benefit Fund of Chicago* v. *FXCM Inc.*, 333 F. Supp. 3d 338, 349 (S.D.N.Y. 2018) ("'maintained a substantial pool of liquidity'" "not actionable, because [it is] the type[] of general statement[] that investors are unlikely to rely on"), *aff'd*, 767 F. App'x 139 (2d Cir. 2019).

Further, the challenged statements reflect Principal Street Partners' and Easterly Investment Partners' (the "Advisers") "expect[ations]," which are inactionable forward-looking statements and opinions. *See Slayton* v. *Am. Exp. Co.*, 604 F.3d 758, 769 (2d Cir. 2010) ("words such as 'expect' identify forward-looking statements"); *In re Farfetch Ltd. Sec. Litig.*, 802 F. Supp. 3d 652, 679 (S.D.N.Y. 2025) ("qualifiers like 'we expect'" are "quintessential non-actionable opinions."); *In re Aratana Therapeutics Inc. Sec. Litig.*, 315 F. Supp. 3d 737, 758 (S.D.N.Y. 2018) (words such as "anticipates" are "opinions" and "forward-looking statements."). Because the challenged statement "merely articulate[s] the goal[] of the Fund, rather than promise a particular investment strategy," it is inactionable as a matter of law. *Emerson* v. *Mut. Fund Series Tr.*, 393 F. Supp. 3d 220, 243 (E.D.N.Y. 2019).

Plaintiff claims that the Funds' purported investments in defaulted bonds represent an "undisclosed significant or principal investment strategy, *according to the SEC definition*." (SAC ¶149 (emphasis added).) Plaintiff references the SEC's guidance for completing Form N-1A, which explains that determining a fund's "principal investment strategies," "depends on the strategy's *anticipated importance* in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns," based on factors such as "the amount of

the Fund's assets expected to be committed to the strategy," "the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy." (SEC Form N-1A, Item 9(b)(2) (emphasis added); *see* SAC ¶71.) The SEC's 1998 adopting release also advises funds to "focus disclosure on… *anticipated* investment operations." Registration Form Used by Open-End Mgmt. Inv. Cos., Securities Act Release No. 33-7512, Exchange Act Release No. 34-39748, Investment Company Act Release No. IC-23064, 63 Fed. Reg. 13,916 (Mar. 23, 1998) (emphasis added). The Funds' disclosures about what the Advisers "anticipate" are classic examples of subjective and forward-looking statements that are inactionable absent allegations that the Advisers had actual knowledge of their falsity. *See, e.g.*, *In re Weight Watchers Int'l Inc. Sec. Litig.*, 504 F. Supp. 3d at 253 ("For a forward-looking statement to be actionable, the plaintiff must show that the statement was 'made with actual knowledge of [its] falsity by the speaker.'"); *Fernandes* v. *Centessa Pharms. PLC*, 2024 WL 3638254, at *15-16 (S.D.N.Y. Aug. 2, 2024) ("'[S]tatement[s] [that] turn[] on the exercise of subjective judgment'" are inactionable opinion statements absent allegations that "'the speaker did not hold the belief she professed' or 'the supporting fact she supplied were untrue'").

The Private Securities Litigation Reform Act provides a safe harbor from liability for forward-looking statements including "the plans and objectives of management." 15 U.S.C. §78u-5(i)(1)(B). The safe harbor requires dismissal if *either* of two prongs apply: the statement is "accompanied by meaningful cautionary language *or*… the plaintiff fails to provide that it was made with actual knowledge that it was false or misleading." *Slayton*, 604 F.3d at 766 ("safe harbor is written in the disjunctive"). Here, both apply to the Advisers' statements about whether they "expect" that purchasing defaulted securities "will be a significant investment strategy." (SAC ¶190.) Plaintiff does not assert the Advisers "knew that their statements… were false." *In*

re Danimer Sci., Inc. Sec. Litig., 2023 WL 6385642, at *7 (E.D.N.Y. Sept. 30, 2023). As noted, Plaintiff specifically disclaims fraud. And, as described above, Defendants repeatedly stated that they "may… invest in defaulted municipal bonds" and warned of the risks. (Exh-4, at 8. *See* Exh-11, at 26 ("defaulted securities" are "highly speculative and involve[] a high degree of risk, including… substantial or complete loss of the Funds' investment").)

The Funds' Reports also disclosed investments in bonds that defaulted after they were acquired. (*See, e.g.*, Exh-20, at 15-26.) Plaintiff quibbles that Defendants failed to identify a handful of defaulted bonds in 2024 Reports. (SAC ¶¶151-152.) But most of these defaults occurred in 2022 and 2023 and were disclosed in the Funds' 2022 and 2023 Reports. (*See* Exh-20, at 15-26; Exh-24, at 15-24.) Repeating information about these defaults in 2024 would not have "'significantly altered the total mix of information [already] made available.'" *ProShares*, 728 F.3d at 102. Moreover, the default notices were publicly posted on EMMA, rendering any alleged misstatements "immaterial" as a matter of law.[13] *SRM Glob. Fund*, 2010 WL 2473595, at *9. "'[W]here information is equally available to both parties, a defendant should not be held liable… for failure to disclose.'" *Garnett* v. *RLX Tech. Inc.*, 632 F. Supp. 3d 574, 607 (S.D.N.Y. 2022), *aff'd*, 2023 WL 8073087 (2d Cir. Nov. 21, 2023).

D. Plaintiff's Allegations About "The Same or Related Businesses" Do Not State a Claim.

Plaintiff asserts Defendants misled investors by warning: "[t]he securities of issuers in the same or related businesses ('industry sectors'), if comprising a significant portion of the Fund's portfolio, may in some circumstances... adversely affect the portfolio to a greater extent

[13] *See, e.g.*, Exh-39, at 1 (CC Young Memorial Home bonds referenced in SAC ¶151 disclosed default in 2024).

than" if the portfolio was more diversified. (SAC ¶197.) Plaintiff's theory is that, because the Funds invested in ten bonds of related "Jefferson Enterprise" companies, this risk was no longer "hypothetical." (SAC ¶¶153, 198.) This does not plead a claim.

Defendants did not promise the Funds would not invest in related companies. Rather, the Funds disclosed that they *did* invest in related businesses, and the specific risk—that concentration could "adversely affect" the portfolio—had not yet occurred when the statements were made. (*See* SAC ¶197.) Plaintiff faults Defendants for supposedly mischaracterizing the risk as "hypothetical, future risk" when the investments in related businesses had already been made. (SAC ¶198.) But when Defendants issued their warnings, the losses had not yet occurred, so the risk had not materialized. Moreover, the Reports disclosed holdings throughout the Class Period. No reasonable investor could have thought all the companies were unrelated: the obligor was "Gladieux Metals Recycling" for five bonds and "Allegiant Industrial" for two bonds. (*See, e.g.*, Exh-20, at 20, 22, 23.) Indeed, the bonds' offering materials—available on EMMA—referenced their connection to the Jefferson Enterprise. (Exh-40, at 6.) Defendants had no obligation to disclose information readily "available to both parties." *Garnett*, 632 F. Supp. 3d at 607. *See Blackmoss Invs. Inc.* v. *ACA Cap. Holdings, Inc.*, 2010 WL 148617, at *8 (S.D.N.Y. Jan. 14, 2010) ("disclosure of information alleged… to have been withheld… renders the Complaint insufficient as a matter of law"). No "reasonable investor" would have been "misled into thinking that the risk that materialized… did not actually exist." *Gregory* v. *ProNAi Therapeutics Inc.*, 297 F. Supp. 3d 372, 397-98 (S.D.N.Y.), *aff'd*, 757 F. App'x 35 (2d Cir. 2018).

II. PLAINTIFF'S CLAIMS ARE TIME-BARRED.

The Securities Act's one-year statute of limitations bars Plaintiff's claims. *See* 15 U.S.C. §77m. The limitations period begins to run when investors have "'notice'" of facts "'which in the exercise of reasonable diligence, would have led to actual knowledge.'" *Lighthouse*, 902 F.

Supp. 2d at 346. Inquiry notice arises where "financial, legal, or other data, such as public disclosures" would "alert a reasonable person to the probability" of a claim. *In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 402, 421 (S.D.N.Y. 2005). Plaintiffs are "'charged with knowledge of any fact that "a reasonably diligent plaintiff would have discovered."'" *Coupang*, 2025 WL 2613650, at *33 (S.D.N.Y. Sept. 10, 2025).

The December 2023 *Morningstar* article—itself based on publicly available information—put a "reasonably diligent investor of ordinary intelligence" on notice of the claims.[14] *NECA-IBEW Pension Tr. Fund* v. *Bank of Am. Corp.*, 2013 WL 620257, at *9 (S.D.N.Y. Feb. 15, 2013). Indeed, each of *Morningstar*'s "Critical Lessons" parallels Plaintiff's allegations (Exh-3, at 1):

Plaintiff's Allegations	***Morningstar* Reporting**
Liquidity disclosures were insufficient to represent "the risk" of holding "illiquid securities." (SAC ¶¶167-181.)	Fund could have "problems" "were it to try to liquidate those positions quickly." (Exh-3, at 1.)
Funds misrepresented that "invest[ing] in defaulted securities" was a "significant or principal investment strategy." (SAC ¶191.)	Fund's "concentration" of "defaulted bonds" comprised "more than 18% of the portfolio." (Exh-3, at 4.)
Funds misrepresented risks of investing in "securities in the same or related business." (SAC ¶198.)	Fund was one of the "least diversified" "high-yield muni" funds. (Exh-3, at 4.)

Morningstar even reported that the Fund's yield was the "highest every month since… 2018," cautioning that this was "almost always a warning sign." (Exh-3, at 5.) News reports also detailed problems at the obligors, such as "bankruptcy" at Legacy Cares. (*See* Exh-33.)

[14] "'In determining when a reasonable investor would have discovered the fraud, courts may take judicial notice of "the fact that press coverage contained certain information, without regard to the truth of its contents."'" *Youngers* v. *Virtus Invs. Partners, Inc.*, 195 F. Supp. 3d 499, 520-21 (S.D.N.Y. 2016).

Plaintiff conclusorily asserts that "less than one year has elapsed from the time [he] discovered or reasonably could have discovered" his claims. (SAC ¶¶213, 223.) But Plaintiff filed his Complaint on July 24, 2025, ***19 months after*** the *Morningstar* article. Plaintiff does not allege how, considering the array of publicly available information, he could not have "discovered" his claim "earlier" or what "diligent efforts" he "undertook in making or seeking such discovery." *Lighthouse*, 902 F. Supp. 2d at 346. The "body of information makes it plain that inquiry notice arose well before" July 24, 2024. *In re Morgan Stanley Mortg. Pass-Through Certificates Litig.*, 2010 WL 3239430, at *8 (S.D.N.Y. Aug. 17, 2010) (considering "news reports," "monthly reports to investors" and "an SEC report"). Where, as here, "the facts from which knowledge may be imputed are clear," Plaintiff's claims are time-barred. *Alstom*, 406 F. Supp. 2d at 421-22.

Moreover, given the information in Defendants' disclosures and from public sources such as SEC reports, news reports, and EMMA, disclosing all the supposedly undisclosed risks, any investor would have been on inquiry notice at the time they purchased securities in the Funds. This additionally renders time-barred any claims based on purchases before July 24, 2024. *See Alstom*, 406 F. Supp. 2d at 421 (claims time-barred where "'financial, legal, or other data, such as public disclosures'" would have alerted a reasonable investor).

The statute of repose also bars certain of Plaintiff's Section 12(a)(2) claims based on the February 2022 MPS Trust registration statement.[15] The Securities Act imposes a three-year statute of repose for Section 12(a)(2) claims from the date of "sale." 15 U.S.C §77m. Claims brought outside that period "extinguish[]" "defendant's liability." *Footbridge Ltd. Tr.* v. *Countrywide Fin. Corp.*, 770 F. Supp. 2d 618, 623 (S.D.N.Y. 2011). Plaintiff first filed a

[15] Implicitly conceding the applicability of the statute of repose, in his recent amendments, Plaintiff withdrew his Section 11 claim based on the February 2022 registration statement. *See* SAC ¶209.

complaint on July 24, 2025. (*Fulford*, No. 25-cv-06102, ECF No. 1.) Accordingly, Plaintiff's Section 12(a)(2) claims are also barred to the extent they seek to impose liability for sales predating July 24, 2022.

III. PLAINTIFF HAS NOT PLED A COGNIZABLE PROXY DISCLOSURE CLAIM.

Counts IV and V, which assert claims under Exchange Act Sections 14(a) and 20(a) based on Easterly Trust's Proxy, fail as a threshold matter because, as set forth in Section I, Plaintiff has not pled an actionable misstatement. *See In re Columbia Pipeline, Inc.*, 405 F. Supp. 3d 494, 506 (S.D.N.Y. 2019) ("To plead a 14(a) claim, a plaintiff must adequately allege" a "'material misrepresentation or omission….'"). Because "[t]he PSLRA's pleading requirements as to misleading statements and omissions apply to Section 14(a) claims sounding in negligence," *Furlong Fund LLC* v. *VBI Vaccines, Inc.*, 2016 WL 1181710, at *3 (S.D.N.Y. Mar. 25, 2016), Plaintiffs' failure to "demonstrate with specificity why and how" Defendants' statements were misleading is all the more fatal, *In re Bemis Co. Sec. Litig.*, 512 F. Supp. 3d 518, 529 (S.D.N.Y. 2021) (internal quotation marks omitted).

Each of the following grounds also requires dismissal:

A. Plaintiff Has Not Pled That the Challenged Statements Were an "Essential Link" in The Reorganization or Caused Investor Loss.

Section 14(a) requires Plaintiff to allege that the Proxy "solicitation… was an essential link in the accomplishment of the transaction." *Bisel* v. *Acasti Pharma, Inc.*, 2022 WL 4538173, at *7 (S.D.N.Y. Sept. 28, 2022). Specifically, Plaintiff "must 'allege that the misrepresentation induced [him] to enter into the transaction.'" *Tiberius Cap., LLC* v. *PetroSearch Energy Corp.*, 2011 WL 1334839, at *6 (S.D.N.Y. Mar. 31, 2011). That is, "'but for the fraudulent statement or omission, the plaintiff would not have entered into the transaction.'" *Canaan X L.P.*

v. *MoneyLion Inc.*, 734 F. Supp. 3d 259, 268 (S.D.N.Y. 2024) (quoting *Suez Equity Invs., L.P.* v. *Toronto-Dominion Bank*, 250 F.3d 87, 95 (2d Cir. 2001)).

Plaintiff does not come close. (SAC ¶¶48-53.) In fact, the Proxy directly refutes that the challenged statements impacted the vote: the very first page informed investors that the Funds "have the *same* investment objectives," "*substantially similar* principal investment strategies and invest in the *same* types of securities under the *same* portfolio management team. As a result, the principal risks… are *substantially similar*." (Exh-15, Proposal at 1 (emphases added).) The challenged statements could not have impacted the vote because the Funds' procedures and risks would remain unchanged irrespective of whether the Reorganization was approved. Thus, they could not have been "an 'essential link' in affecting the proposed corporate action." *Int'l Bhd. of Teamsters, Garage Emps. Loc. 272 Lab. Mgmt. Pension Fund* v. *Apple Inc.*, 2024 WL 475018, at *7 (S.D.N.Y. Feb. 7, 2024). *See also Canaan*, 734 F. Supp. 3d at 268 (plaintiffs must allege "that but for the fraudulent statements or omissions… shareholders would not have voted in favor of" the transaction).

In its Second Amended Complaint, Plaintiff attempted to remedy this pleading flaw by adding allegations that the MPS Trustees represented that they each "possessed the requisite skills and attributes as a trustee to carry out oversight responsibilities" and further "represented that Defendant Easterly Partners and its affiliates would deliver high quality services" including in "fund operations, compliance, valuation and overall management" and "would provide proper governance and oversight." (SAC ¶¶49, 254-256.) These statements could not have impacted any vote because courts routinely recognize them as immaterial as a matter of law. *See, e.g.*, *Barilli*, 389 F. Supp. 3d at 251-52 (statements "extolling" defendants' "experience, … expertise," and "the strength and experience of… management team" not actionable; "general positive statements

about… management abilities… are at most non-actionable puffery"); *Lopez* v. *Ctpartners Exec. Search Inc.*, 173 F. Supp. 3d 12, 27, 30 (S.D.N.Y. 2016) (statement that Defendants "retain high quality, experienced consultants" was "immaterial puffery, and therefore [is] not actionable under the securities laws").

Plaintiff also fails to plead loss causation. "The existence of a material misstatement or omission cannot by itself establish loss causation." *In re GTx, Inc. S'holders Litig.*, 2020 WL 3439356, at *4 (S.D.N.Y. June 23, 2020). Plaintiff must allege that "'a misstatement or omission concealed *something* from the market that, *when disclosed*, negatively affected the value of the security.'" *Lanigan Grp., Inc.* v. *Li-Cycle Holdings Corp.*, 2023 WL 6541884, at *9 (E.D.N.Y. Oct. 6, 2023).

Rather than plead economic harm, Plaintiff concedes that, following the Reorganization, investors owned Easterly Fund shares "*equal in total value*" to their Principal Street Fund shares. (SAC ¶51 (emphasis added).) This admission refutes loss causation because Plaintiff was required to plead that "shareholders actually receive[d] less than they would otherwise have because of the alleged omission or misrepresentation." *In re GTx, Inc. S'holders Litig.*, 2020 WL 3439356, at *4. Plaintiff also concedes that the alleged "loss" occurred "at the end of the Class Period." (SAC ¶270.) This only underscores that the vote approving the Reorganization made no difference. The Funds' portfolio, strategy and management remained materially unchanged. (*See, e.g.*, SAC ¶53 ("[I]n connection with the Reorganization, 'Easterly entered an agreement to lift out the Municipal Bond team… from Principal Street Partners.'").) Plaintiff provides no explanation of how, but for the shareholder vote, he would have suffered no loss.

B. Plaintiff Has Not Alleged Any Defendant's Negligence.

Under the PSLRA, to survive dismissal, "Plaintiff[] must plead with particularity facts that give rise to a strong inference of negligence on the part of all Defendants," *Bond Opportunity Fund* v. *Unilab Corp.*, 2003 WL 21058251, at *4 (S.D.N.Y. May 9, 2003), *aff'd*, 87 F. App'x 772 (2d Cir. 2004), such as "facts supporting an inference that Defendants had actual knowledge that any statements in the Proxy were false," *Bemis*, 512 F. Supp. 3d at 525. "[C]ursory allegations" are insufficient. *Bouchard-A* v. *N. Genesis Acquisition Corp.*, 2025 WL 1808469, at *9 (S.D.N.Y. July 1, 2025).

Plaintiff conclusorily alleges that because Defendants had access to "books and records" and a "valuation report" (SAC ¶245) and had experience or responsibility for financial reporting (SAC ¶¶249-256), Defendants must have "acted negligently" (SAC ¶266). These types of generic allegations do not allege a strong inference of negligence. If merely alleging access to company records and experience and responsibility for financial reporting were enough, then negligence would be automatically pled in every case because all company leaders would meet that standard.

C. Plaintiff's Proxy Claims Also Should Be Dismissed Because No Effective Relief Can Be Granted.

Preliminary injunctive relief is "'generally the only effective remedy'" for allegedly misleading proxy statements approving "major corporate transactions that would [be] difficult to reverse if they were not enjoined from happening." *Silberstein* v. *Aetna, Inc.*, 2014 WL 1388790, at *3 (S.D.N.Y. Apr. 9, 2014). Courts require "the voting item to be resubmitted to shareholders along with corrected disclosures." *Id.*, at *4. This remedy is unavailable because the Reorganization closed. (Exh-16, at 6.)

Plaintiff's request for "damages, including loss of the fair value of the[] shares" is similarly impermissible. (SAC ¶270.) Plaintiff concedes that investors received Easterly Fund shares "equal in total value" to their Principal Street Fund shares in the Reorganization. (SAC ¶51.)

IV. PLAINTIFF DOES NOT PLEAD CONTROL PERSON LIABILITY.

Plaintiff's control-person claims under Section 15 of the Securities Act (Count III) and Section 20(a) of the Exchange Act (Count V) should be dismissed on several grounds.

Plaintiff must allege "a primary violation" and "control" over the controlled person. *In re HEXO Corp. Sec. Litig.*, 524 F. Supp. 3d 283, 305 (S.D.N.Y. 2021) (Section 15); *Carpenters Pension Tr. Fund of St. Louis* v. *Barclays PLC*, 750 F.3d 227, 236 (2d Cir. 2014) (Section 20(a)). For Section 20(a), Plaintiff must additionally plead that each Defendant was "a culpable participant in the controlled person's fraud." *Carpenters*, 750 F.3d at 236. Plaintiff does not meet these standards.

First, because Plaintiff has not alleged any primary violation, his control-person claims must be dismissed. *See Scott* v. *Gen. Motors Co.*, 46 F. Supp. 3d 387, 398 (S.D.N.Y. 2014) ("Section 15 claims necessarily fail" where plaintiffs "failed to state a claim under Section 11"), *aff'd*, 605 Fed. App'x 52 (2d Cir. 2015); *Bemis*, 512 F. Supp. 3d at 546 (Section 20(a) claim "fails" where plaintiff "fails to plead… Section 14(a) violation").

Second, Plaintiff has not adequately pled a Section 15 claim against Messrs. Willis and Pulire or the Advisers, none of whom signed any challenged registration statement, because Plaintiff fails to plead that Messrs. Pulire and Willis or the Advisers exercised any control over the alleged primary violator.

As to Messrs. Pulire and Willis, Plaintiff generically asserts that each is "a control person by virtue of their positions as the portfolio manager" because they are "responsible for…

choosing the Fund's investments and handling its day-to-day business." (SAC ¶236.) Plaintiff also claims Messrs. Pulire and Willis had "control" over "security selection" and "implementing the liquidity risk management program." (SAC ¶236.) But Plaintiff ignores that Messrs. Pulire and Willis were prohibited by law from "determin[ing], or effectively determin[ing]… the fair values ascribed to portfolio investments." 17 C.F.R. §270.2a-5(b)(2). Moreover, "the 'matter[] at issue'" in the claims is the alleged "misstatements contained in the registration statement… not the adoption of the [investment] strategy" or securities selection. *Youngers*, 195 F. Supp. 3d at 525. Plaintiff does not allege Messrs. Pulire and Willis exercised any control over the alleged misstatements at all.

As to the Advisers, Plaintiff alleges Principal Street Partners provided services under an "investment advisory agreement," including "management and investment of the Fund's securities portfolio" and furnishing "office space" and "personnel" for a "monthly management fee." (SAC ¶28.) Easterly Investment Partners allegedly provided services under an "investment advisory agreement," "subject to the general supervision of the board of trustees of Easterly Trust," including "managing the Fund in accordance with its investment objective and policies" and "rendering investment advice." (SAC ¶29.) These allegations amount to the provision of "advice, feedback, and guidance," not the required "power to *direct*, rather than merely inform," the "'management and policies'" of the Funds. *In re Lehman Bros. Mortg.-Backed Sec. Litig.*, 650 F.3d 167, 187 (2d Cir. 2011). Plaintiff's allegations that the Advisers were "responsib[le] for managing the Fund" (SAC ¶237) "merely constitute[] a boilerplate statement of control status" insufficient to state a claim. *Emerson* v. *Mut. Fund Series Tr.*, 393 F. Supp. 3d 220, 260 (E.D.N.Y. 2019).

Third, Plaintiff's Section 20(a) claims against Messrs. Willis and Pulire and the Advisers should be dismissed because, as discussed in Section III, Plaintiff has not alleged a primary violation of Section 14(a).

Plaintiff's Section 20(a) claims against Messrs. Willis and Pulire should also be dismissed because Plaintiff does not allege that they signed or prepared the challenged Proxy. (SAC ¶274.) Nor does Plaintiff's allegation that they "served as proxies" for the Reorganization vote (SAC ¶275) plead "control of or culpable participation in the alleged Section 14(a) violation." *Furlong Fund*, 2016 WL 1181710, at *7. "[T]hese allegations are unavailing because they focus exclusively" on their roles "rather than [their] exercise of 'actual control'" over the Proxy. *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 166 (S.D.N.Y. 2012). *See In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731, 771 (S.D.N.Y. 2017) (Section 20(a) claim insufficient absent "concrete allegations as to [defendant's] activities in connection with, or responsibility for" SEC filings).

Plaintiff's bare-bones allegations that Principal Street Partners "proposed the Reorganization" and that Easterly Investment Partners "caused" the challenged Proxy "to represent that it believed shareholders… would benefit from the Reorganization" fare no better. (SAC ¶¶277-278.) Plaintiff "must 'allege particularized facts' of the defendants' 'culpable participation in the fraud perpetrated by the controlled person.'" *In re Weight Watchers Int'l Inc. Sec. Litig.*, 504 F. Supp. 3d at 264. Plaintiff alleges, however, mere "involvement," which falls short of "conscious misbehavior" or "specific facts from which the Court might conclude… culpable participat[ion]." *Special Situations Fund III QP, L.P.* v. *Deloitte Touche Tohmatsu CPA, Ltd.*, 33 F. Supp. 3d 401, 439 (S.D.N.Y. 2014).

CONCLUSION

For the foregoing reasons, Plaintiff's Second Amended Complaint should be dismissed. Because Plaintiff has already amended twice, including in response to Defendants' prior motion to dismiss, and because the Court has recognized that "[i]t is unlikely that Lead Plaintiff will be granted any further opportunities to amend," this dismissal should be with prejudice. (ECF No. 68.)

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of S.D.N.Y. Local Civil Rule 7.1(c), Your Honor's Individual Rules, and Your Honor's February 26, 2026 Revised Scheduling Order (ECF No. 104) because it contains 10,737 words, excluding the portions exempted by S.D.N.Y. Local Civil Rule 7.1(c) and Rule 4.B of Your Honor's Individual Rules of Practice in Civil Cases.

This brief complies with the formatting requirements of S.D.N.Y. Local Civil Rule 7.1(b) and Your Honor's Individual Rules because it has been prepared in Microsoft Word for Office 365 using a double-spaced, 12-point font with 1-inch margins.

Dated March 23, 2026

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