

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE EASTERLY ROCMUNI HIGH
INCOME MUNICIPAL BOND FUND

:
: No. 25-CV-6028-DLC
:
:
:

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

Joshua A. Dunn
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, New York 10019
Telephone: (212) 407-7791
jdunn@vedder.com

Thomas P. Cimino, Jr. (*pro hac vice*)
Steven J. Dollear (*pro hac vice*)
Nusra Ismail (*pro hac vice*)
VEDDER PRICE P.C.
222 N. LaSalle Street, Suite 2400
Chicago, Illinois 60601
Telephone: (312) 609-7500
tcimino@vedder.com
sdollear@vedder.com
nismail@vedder.com

*Counsel for Managed Portfolio Series Trust,
Benjamin J. Eirich, and Brian R. Wiedmeyer*

Robert J. Giuffra, Jr.
David M.J. Rein
Morgan R. Knudtsen
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
giuffrar@sullcrom.com
reind@sullcrom.com
knudtsenm@sullcrom.com

*Counsel for James Alpha Trust d/b/a Easterly
Funds Trust, Easterly Investment Partners
LLC, Easterly Securities LLC, Troy E. Willis,
Charlie S. Pulire, Darrel Crate, Michael J.
Montague, Neil Medugno, and A. Clayton
Spencer*

Additional Counsel Listed on the Next Page

John G. Moon
Adrienne M. Ward
Sahand Farahati
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
Telephone: (212) 451-2300
jmoon@olshanlaw.com
award@olshanlaw.com
sfarahati@olshanlaw.com

*Counsel for Robert J. Kern, David A.
Massart, David M. Swanson, and Ann Clark
Johnston-Rush, Executrix for Estate of
Leonard Rush*

James K. Goldfarb
Cameron S. Matheson
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 42nd Floor
New York, New York 10020
Telephone: (212) 489-4230
JamesGoldfarb@dwt.com
CameronMatheson@dwt.com

Counsel for Quasar Distributors, LLC

Joseph E. Bain
JONES WALKER LLP
261 Madison Avenue, 9th Floor
New York, New York 10016
Telephone: (646) 735-6900
jbain@joneswalker.com

Alexander Breckinridge (*pro hac vice*)
Mark A. Cunningham (*pro hac vice*)
Robert B. Bieck, Jr. (*pro hac vice*)
JONES WALKER LLP
201 St. Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-8138
abreckinridge@joneswalker.com
mcunningham@joneswalker.com
rbieck@joneswalker.com

*Counsel for Principal Street Partners, LLC
n/k/a Calydon Capital, LLC*

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PRELIMINARY STATEMENT

Plaintiff's Opposition speaks loudest through its silence. Plaintiff does not dispute that Principal Street High Income Municipal Fund ("Principal Street Fund"), in which he invested, held mainly "junk bonds." (Exh-4, at 2.)¹ He also does not dispute that this Fund and its successor, Easterly RocMuni High Income Municipal Bond Fund ("Easterly Fund"; together, the "Funds"), warned that they held "highly speculative" "defaulted securities." (SAC ¶190.) Nor does Plaintiff contest that the Funds repeatedly cautioned that they "may need to sell" assets "at significantly reduced prices" and securities could "become illiquid." (SAC ¶174.) Plaintiff and other investors accepted these risks because the Funds were reported to yield the highest among their peers, double typical municipal bond yields. (Exh-3, at 5; Exh-37, at 4.)

Having enjoyed these outsized benefits, Plaintiff now seeks to be compensated because the risks Defendants warned of materialized and his investment value declined. Plaintiff's Complaint should be dismissed:

First, Plaintiff's Opposition does not refute that he has failed to plead any actionable misstatement. Plaintiff cannot allege how any statement about illiquidity was false when made. Plaintiff impermissibly attempts to show contemporaneous falsity through hindsight, relying on market declines that occurred years later. Nor can Plaintiff escape that Defendants' statements about illiquidity and valuation were inactionable, subjective opinions. Plaintiff's own authority (Opp. 8, 11, 16) recognizes "liquidity determinations are subjective assessments involving the exercise of judgment," not "objective facts that can be misrepresented or support liability under §§ 11 and 12(a)(2)." *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, 838 F.

¹ "Exh" refers to exhibits to the Declaration of David M.J. Rein (ECF 113). "SAC" or "Complaint" refers to Plaintiff's Second Amended Complaint (ECF 98).

Supp. 2d 1148, 1171 (D. Colo. 2012). Further, Plaintiff cannot avoid that Defendants' specific risk warnings meant the challenged statements viewed "together and in context," could not "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).

Second, Plaintiff's claims are time-barred. Plaintiff's Opposition and motion to strike (ECF 116, 117) desperately try to minimize a *Morningstar* article prominently alerting investors of the Funds' supposedly hidden risks 19 months before Plaintiff filed suit. Recognizing the devastating effect of the article on his claims, Plaintiff is reduced to speculating about whether the article was accessible—it remains available on *Morningstar*'s website—and pleading with the Court to strike it. The Court should hold Plaintiff's claims time-barred. *In re Global Crossing, Ltd. Sec. Litig.*, 313 F. Supp. 2d 189, 200 (S.D.N.Y. 2003) ("Fortune magazine article... by itself provided the required 'storm warning'").

Third, Plaintiff's Opposition confirms his proxy claims fail. Plaintiff identifies no relief that can be granted given that the shareholder-approved reorganization plan ("Reorganization") occurred in October 2024 and shareholders received Easterly Fund shares "equal in total value" to their Principal Street Fund shares. (SAC ¶51.) Plaintiff pleads no theory of how this transaction caused any shareholder economic loss.

Finally, Plaintiff's "control person" claims fail for want of a primary violation. And, as to some Defendants, Plaintiff fails to plead control over the challenged statements or culpable participation in their issuance.

Having permitted Plaintiff to amend twice, this action should now be dismissed with prejudice.

ARGUMENT

I. PLAINTIFF FAILS TO PLEAD ANY MATERIAL MISSTATEMENT.

A. The Funds' Liquidity Statements Are Inactionable.

Seeking to distract from Defendants' clear liquidity warnings, including that the Funds could hold illiquid investments exceeding Securities and Exchange Commission ("SEC") Rule 22e-4's 15% limit, *see* 17 C.F.R. §270.22e-4, Plaintiff seizes on the term "will not" in just a handful of the challenged statements and argues this guaranteed "certainty" that the Funds would never exceed the limit. (Opp. 6-7, 9-10.)

Plaintiff principally relies on a statement made three times in 2022 and 2023 that "[t]he Funds will not hold more than 15%" of net assets in illiquid securities. (Opp. 2, 6-7; Exh-1, at 3.) In each instance, the statement was coupled with disclosure of the amount of illiquid assets (below 15%) then held by the Fund. (Exh-2, at 72-75.) Plaintiff has not satisfied his obligation to plead falsity when "the registration statement[]... became effective." *Jiajia Luo v. Sogou, Inc.*, 465 F. Supp. 3d 393, 406 (S.D.N.Y. 2020). Plaintiff's Opposition shows that his contemporaneous-falsity theory depends on three assertions, each of which is legally deficient:

First, Plaintiff relies on "market data" suggesting that eleven bonds sold at reduced valuations in *June 2025*. (Opp. 7; SAC ¶¶93-98.) But that says nothing about whether these or other bonds were illiquid during the class period dating back to *July 2022*. *See Jiajia*, 465 F. Supp. 3d at 406 (reliance on "subsequent event" "not sufficient"). Relying on *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000), Plaintiff asserts that "post-class period events" can show falsity (Opp. 13), but the principal allegations there were *contemporaneous* "Weekly Reports" and "confidential sources," and the post-class period "write-off" was merely corroborative. *Novak*, 216 F.3d at 304-05, 312.

Second, Plaintiff claims Defendants' statements were contemporaneously false due to his self-created "economic factors" purportedly showing that "over 15% of the Fund's assets... possessed the economic attributes" of illiquid assets. (Opp. 7.) To claim his position is "supported by economic analysis," Plaintiff points to an academic article unmentioned in his Complaint (Opp. 12) that addressed conditions during the *2020 pandemic*. (Knudtsen Decl. Exh-1, at 4.) Critically, Plaintiff does not contest that his "economic factors" have never been adopted by the SEC into the Rule 22e-4 illiquidity definition. *See* 17 C.F.R. §270.22e-4(a)(8). Plaintiff is thus wrong that Defendants "dispute[] facts" (Opp. 11)—his "economic factors" theory fails *as a matter of law*.

Third, Plaintiff points to a handful of trades in 2025, asserting that they show the challenged bonds were "overvalued" and illiquid. (Opp. 7.) But these trades are irrelevant to statements Defendants made years earlier. Moreover, Plaintiff ignores the SEC's illiquidity standard, which asks whether "the fund reasonably expects" that the asset can be "sold or disposed of in current market conditions in seven calendar days or less" without impacting its value, 17 C.F.R. §270.22e-4(a)(8).

Strewn of these flawed premises, Plaintiff's remaining arguments collapse. For example, Plaintiff disputes that Defendants' liquidity judgments were inactionable opinions. But Plaintiff's theory that Defendants' opinions "did not align with the information in the Fund's possession" rests on these same faulty assumptions. (Opp. 12.) Plaintiff also asserts that the Fund's liquidity determinations were not "couched in language suggesting opinion, such as think, believe, or expect." (Opp. 12, n.9.) Yet, Plaintiff concedes that "the Fund's definition" of "illiquid investment" is "any investment that 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.'" (Opp. 7 (emphasis added).)

Plaintiff does not contest that, when adopting Rule 22e-4, the SEC recognized that liquidity determinations are subjective and “inherently involve judgment and estimations.” (MTD 19 (quoting SEC Adopting Release).)² Absent objective, factual misstatements, Defendants’ liquidity opinions are generally not actionable unless “the speaker did not hold the belief she professed,” *Tongue v. Sanofi*, 816 F.3d 199, 210 (2d Cir. 2016), an allegation Plaintiff does not plead. And Rule 22e-4 contains no private right of action. (MTD 15.)

Plaintiff’s attempts to minimize Defendants’ liquidity risk warnings because “the Fund’s assets were already illiquid” are flawed for the same reasons. (Opp. 13.) Plaintiff identifies no “on-going illiquidity” during the proposed class period. (Opp. 13.) Defendants also repeatedly warned “[t]here may be no willing buyer of the Fund’s portfolio securities,” and that “junk bonds” “held by the Fund” are “speculative” and “subject to additional risk” including “illiquidity.” (Exh-18, at 17-18.) Plaintiff conclusorily belittles these and other warnings as “generic” (Opp. 13), but they specifically warned of “the exact risk that... materialized” causing Plaintiff’s claims to “fail[] as a matter of law.” *Rubinstein v. Credit Suisse Grp. AG*, 457 F. Supp. 3d 289, 296 (S.D.N.Y. 2020).

Attempting to contest that the Funds’ liquidity risks were publicly and easily known, Plaintiff argues that an investor could only learn about “specific bonds” from “different corners of the internet.” (Opp. 23.) That is belied by Plaintiff’s Complaint, which describes the Funds as holding “high profile defaults.” (SAC ¶12.) Under settled law, “publicly available” information renders “purported misstatements immaterial.” *SRM Glob. Fund L.P. v. Countrywide Fin. Corp.*, 2010 WL 2473595, at *9 (S.D.N.Y. June 18, 2010).

² “MTD” refers to Defendants’ opening brief (ECF 112).

B. Defendants' Statements About Valuation Are Inactionable.

Plaintiff asserts that Defendants represented that Fund “assets were valued at ‘market price’ using ‘market-based’ inputs,” but that Defendants’ independent pricing service “ignored current market trades.” (Opp. 14-15.) Plaintiff’s theory ignores Defendants’ actual disclosures:

Defendants’ statements concerned valuation *procedures*. Quoted in context, Defendants stated: “Each Fund’s assets are generally valued at their market price using valuations provided by independent pricing services.” (Exh-2, at 37.) Plaintiff does not allege that Defendants failed to follow this process.

Defendants also expressly disclosed that market-based pricing of Fund assets was not limited, as Plaintiff urges, to the most recent sporadic trade price:

Unlike equity securities, which are valued using market quotations, the municipal bonds in which the Funds primarily invest... are *typically valued by independent pricing services utilizing a range of market-based and security specific inputs and assumptions*, including price quotations from broker-dealers making markets in such instruments, transactions in comparable investments and considerations about general market conditions.

(Exh-2, at 36 (emphasis added).) No reasonable investor could read this disclosure and conclude, as Plaintiff does, that the Funds’ valuations should mirror a specific trade price.

Any valuation—by Defendants or their independent pricing services—was an opinion. That Defendants used the terms “market price” and “market-based” in describing their valuation methodology does not make Defendants’ statements “objective.” *In re Gen. Elec. Co. Sec. Litig.*, 856 F. Supp. 2d 645, 653 (S.D.N.Y. 2012) (“Statements estimating the fair market value of assets are opinions, not... objective fact.”) (Cote, J.) Because valuations are opinions, absent objective falsity, Plaintiff must plead that Defendants “disbelieved them.” *Lighthouse Fin.*

Grp. v. Royal Bank of Scotland Grp., PLC, 902 F. Supp. 2d 329, 345-46 (S.D.N.Y. 2012). Plaintiff does not claim to have pled subjective disbelief.

Defendants warned that their valuations might also be wrong, leading to investor losses:

The price a Fund could receive upon the sale of any particular portfolio investment may differ from the Fund's valuation of the investment, particularly for securities that trade in thin or volatile markets.... As a result, a Fund could realize a greater than expected loss....

(Exh-2, at 36.) Because this “statement warns of the exact risk that later materialized,” Plaintiff's claims cannot “lie as a matter of law.” *In re Riskified Ltd. Sec. Litig.*, 2023 WL 3791653, at *7 (S.D.N.Y. June 2, 2023) (Cote, J.). Further, the published trading prices were equally available to investors as to Defendants. Defendants therefore cannot “be held liable... for failure to disclose.” *See 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).

Plaintiff still identifies only one supposedly overvalued asset, Next Renewable Fuels, which Plaintiff does not dispute comprised 3% of Easterly Fund's May 2025 holdings. (Opp. 18-19; MTD 22.) According to Plaintiff, this asset “became worthless... in November 2023.” (Opp. 15.) But, absent misstatements of fact or subjective disbelief, Defendants' valuation opinions are not rendered actionable because Plaintiff has a different view. *Mitchell v. Taro Pharm. Indus. Ltd.*, 2025 WL 3003681, *10 (S.D.N.Y. Oct. 27, 2025) (“Disagreements as to valuation methods, however, are insufficient to support a securities fraud claim”).

Plaintiff complains that “valuation risk” is not “highlight[ed]” as a “principal risk,” in two 2022 registration statements. (Opp. 19.) But Plaintiff has no answer for the fact that Defendants *did* disclose valuation risks under “Principal Risks.” (*E.g.*, Exh-2, at 4 (“The

secondary market for... junk bonds may be less liquid... [and] may have an adverse effect on... a Fund's ability to arrive at a fair value").

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

Plaintiff challenges a statement that the Funds "may purchase defaulted securities.... The Adviser does not expect that this will be a significant investment strategy of the Funds." (Exh-1, at 20.) Plaintiff's Opposition does not refute that this statement is inactionable.

First, Plaintiff does not dispute that this statement is an opinion. *See In re Farfetch Ltd. Sec. Litig.*, 802 F. Supp. 3d 652, 679 (S.D.N.Y. 2025) ("we expect" is "quintessential non-actionable opinion[]"). Plaintiff does not allege, as he must, that Defendants disbelieved their opinion or that it contained any untrue facts.

Second, Plaintiff is unable to rebut that the pivotal term "significant" is too general to be actionable. *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). Attempting to shoehorn in objectivity, Plaintiff argues that purchasing defaulted bonds should have been disclosed as a "principal strategy" under SEC regulations." (Opp. 19.) But the SEC regulations are premised on "the strategy's anticipated importance in achieving the Fund's investment objective," which is itself an opinion, not an objective standard. (MTD 24-25.)

Third, Plaintiff does not contest that no bond was in default when purchased. Instead, Plaintiff now argues that "exposure to defaulted securities" is what matters. (Opp. 20 n.17.) This ignores the literal language of Defendants' disclosures: "significant investment strategy" refers to "*purchas[ing]* defaulted securities." (Exh-2, at 66.)

Fourth, Plaintiff seeks to avoid Defendants' risk warnings by suggesting that "investing in defaulted securities was already" a significant investment strategy. (Opp. 20.)

Plaintiff’s argument rests on the same flawed assumption that the term “significant” or the SEC standard is objective. Defendants’ caution that they “may... invest in defaulted securities,” which are “highly speculative,” protects Defendants under the bespeaks caution doctrine.³ *See Rombach v. Chang*, 355 F.3d 164, 173 (2d Cir. 2004) (“Under the bespeaks caution doctrine, ‘alleged misrepresentations... are immaterial as a matter of law [if] it cannot be said that any reasonable investor could consider them important in light of adequate cautionary language set out in the same offering.’”).

Finally, as to the handful of defaults the Funds disclosed in 2022 and 2023 but not in 2024, Plaintiff does not dispute that information about the defaults was publicly available in 2024 on the Electronic Municipal Market Access system. (*See* MTD 26.) These “alleged misrepresentations... are immaterial as a matter of law.” *Halperin v. eBanker USA.com, Inc.*, 295 F.3d 352 (2d Cir. 2002).

D. Defendants’ Statements About “The Same or Related” Businesses Are Inactionable.

Plaintiff claims that Defendants should have done more to disclose that ten bonds in the Funds’ holdings were “tied to a single developer,” the Jefferson Enterprise. (Opp. 22.) Plaintiff asserts that this rendered misleading Defendants’ risk warning that “securities of issuers in the same or related businesses... may, in some circumstances... adversely affect... the portfolio....” (SAC ¶197.)

Defendants *did* disclose that they invested in related companies. (*E.g.*, Exh-2, at 4.) Plaintiff complains that information about the affiliations was not “on the Fund’s website.”

³ Defendants assert the PSLRA safe-harbor as to statements in proxy statements, but not registration statements.

(Opp. 23.) But Plaintiff ignores that this information was in the Funds’ Annual and Semi-Annual Reports, which are publicly filed with the SEC. The information was available in “SEC filings,” and not limited to “an obscure industry website” as Plaintiff claims. (Opp. 24, n.20.) No reasonable investor could have thought the obligors unrelated: the obligor was “Gladieux Metals Recycling” for five bonds and “Allegiant Industrial” for two bonds.⁴ (*See, e.g.*, Exh-20, at 20, 22-23.)

II. PLAINTIFF’S CLAIMS ARE TIME-BARRED.

Nothing about Plaintiff’s Opposition refutes that his claims are time-barred.

Plaintiff first asserts the wrong standard. Plaintiff claims that the *Morningstar* article did not “raise the probability of fraud.” (Opp. 26; *see also* Opp. 25 (*Morningstar* does not “accuse any Defendant of wrongdoing”).) Plaintiff has not asserted fraud-based claims under Section 10(b) of the Exchange Act, instead limiting his action to non-fraud claims alleging material misstatements. (*See* SAC ¶¶ 208, 216, 243.) *Morningstar* did not need to allege fraud or wrongdoing to put Plaintiff on inquiry notice of these claims.

Plaintiff then seeks to minimize the article, asserting “its contents do not ‘relate[] directly’” to Plaintiff’s claims. (Opp. 25.) The article, however, cuts to the heart of Plaintiff’s claims, stating that the Fund faced serious liquidity risks, experienced “difficulty valuing certain” assets, held “defaulted bonds,” and had risks from concentrated investments. (Exh-3 at 3-4, 7-8.) *Morningstar* also alerted that the Fund flew “very close to the sun,” “[e]ven among its peers,” and

⁴ Plaintiff incorrectly suggests Defendants argue loss causation. (Opp. 23, n.18.) Defendants are responding to Plaintiff’s assertion that the “risk ha[s] already materialized” when the challenged statements were made. (Opp. 22.) Plaintiff is wrong. The risk Defendants warned of was that concentration may “adversely affect” the portfolio (SAC ¶197), which Plaintiff alleges materialized at the end of the proposed class period.

that the Fund's "yield," "relative to" its peers, should have been a "warning sign." (See Exh-3 at 3, 5.)

Trying to distinguish the *Morningstar* article from his pleading, Plaintiff points to Complaint allegations, such as that "more than 15% of the Fund's assets were illiquid" and that the pricing services "ignored" sporadic transactions. (Opp. 25-26.) But, as set out in Section I, above, each of these premises is legally baseless so would never appear in any report. Unlike Plaintiff's authorities, where the report did not tie the risks to a defendant, the *Morningstar* article expressly concerned the Fund. See *In re Moody's Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 505-06 (S.D.N.Y. 2009) (risk of "potential conflicts of interest in the credit-ratings industry" without reference to Moody's).

Plaintiff is reduced to raising specious questions about whether and when the *Morningstar* article was published and its "accessib[ility]." (Opp. 26.) The Court can go to the website address that appears on each page of Exhibit 3 and see that the article remains fully accessible today.⁵ The article is dated "Dec. 26, 2023," removing any serious question about when it was published. (Exh-3, at 1.)

Plaintiff's assertion that the publication must be "widespread and prominent" mischaracterizes *Staehr v. Hartford Financial Services Group, Inc.*, 547 F.3d 406 (2d Cir. 2008). (Opp. 27.) The actual quote from *Staehr* is "the more widespread and prominent the public information... the less company-specific the information must be." *Id.* at 432. *Morningstar's* report could not have been more company-specific, lowering any need for prominence under this standard. In fact, "[i]n this District, as little as one news article is enough to put an investor on

⁵ Eric Jacobson, *6 Critical Lessons for Bond Investors*, MORNINGSTAR (Dec. 26, 2023), <https://www.morningstar.com/bonds/6-critical-lessons-bond-investors> (last visited May 7, 2026).

inquiry notice.” *Moody’s*, 599 F. Supp. 2d at 505. Nor is *Morningstar* obscure. Multiple courts have taken notice of *Morningstar* publications. See *Wilcox v. Georgetown Uni.*, 2019 WL 132281, at *4 n.5 (D.D.C. Jan. 8, 2019) (“The Court also takes judicial notice of... information... available through Morningstar, a well-respected investment research firm.”); *Phillips v. Cobham Advanced Elec. Sols., Inc.*, 2025 WL 4481078, at *1, n.3 (N.D. Cal. Mar. 21, 2025) (taking judicial notice of “documents from... Morningstar” which plaintiffs “recognize[]... as ‘the most accepted source of investment performance information.’”).⁶

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

A. No Effective Relief Can Be Granted.

Plaintiff’s Opposition confirms that his proxy claims under the Exchange Act must be dismissed. Plaintiff concedes that he “does not seek” injunctive relief. (Opp. 32, n.28.) But injunctive relief is “generally the only effective remedy” for a claim challenging “major corporate transactions” based on an allegedly misleading proxy statement. *Silberstein v. Aetna, Inc.*, 2014 WL 1388790, at *3 (S.D.N.Y. Apr. 9, 2014).

Plaintiff thus frames his claim as limited to seeking “actual damages.” (Opp. 32.) However, there can be no damages here because, as Plaintiff himself pleads, investors received Easterly Fund shares “*equal in total value*” to their Principal Street Fund shares in the Reorganization. (SAC ¶51 (emphasis added).) Plaintiff has not articulated any cognizable basis for any kind of relief for his proxy claims, which thus requires their dismissal.

⁶ Plaintiff asserts that Defendant Darrell Crate “reassured investors” (Opp. 28), but the statement he cites was made months apart from the *Morningstar* article and had no connection to it. (SAC ¶46.)

B. Plaintiff Has Not Pled Loss or Transaction Causation.

For similar reasons, Plaintiff has not pled loss causation. Plaintiff concedes that investors received Easterly Fund shares “equal in total value” to their Principal Street Fund shares. (SAC ¶51.) Under settled loss causation standards, however, Plaintiff was required to plead that shareholders “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.

To try to avoid his admission of no loss causation, Plaintiff reframes his theory, asserting now that “the loss... was caused by the materialization of the concealed risks after the Class Period.” (Opp. 30-31.) In other words, even though investors received shares of “equal value” following the October 2024 Reorganization, investors incurred a loss in June 2025. Plaintiff provides no explanation of any causal connection, and the undisputed facts refute it. Specifically, the Proxy made clear that the Easterly Fund would continue to invest “in the same types of securities” as the Principal Street Fund with “substantially similar principal investment strategies.” (Exh-15, Proposal at 1.) The Funds’ procedures and risks would accordingly remain unchanged regardless of whether the Reorganization was approved. Under Plaintiff’s theory, the June 2025 loss would have occurred irrespective of the Proxy vote. (*See* SAC ¶51.) Plaintiff has thus alleged nothing about the Proxy that caused any investor loss.

As to transaction causation, Plaintiff claims that the Proxy was an “essential link... because the Reorganization could not have occurred without the shareholder vote.” (Opp. 29.) But, as Plaintiff concedes, he must also allege that “a reasonable shareholder would consider” the challenged Proxy statements “important in deciding how to vote on the Reorganization.” (Opp. 29.) *See Minzer v. Keegan*, 218 F.3d 144, 149 (2d Cir. 2000) (“[M]ateriality assumes that the omitted information would have influenced a reasonable shareholder against the proposed transaction for which proxies were sought.”). Plaintiff, however, has provided no theory alleging

why a reasonable shareholder would consider the challenged Proxy statements important when casting their Reorganization vote. (See SAC ¶265.) As explained above, the Proxy on its face makes clear that the challenged statements could not have been important to the Reorganization vote because the relevant investment strategies were to remain unchanged. As a result, Plaintiff has failed to plead transaction causation.

C. Plaintiff Has Not Alleged Any Defendant’s Negligence.

Plaintiff claims to have pled negligence simply by alleging Defendants “signed and participated in the preparation and dissemination of the Proxy.” (Opp. 31.) Under Plaintiff’s approach, any person who “sign[s] and participate[s]” in the Proxy automatically satisfies the negligence standard, effectively eviscerating any pleading requirement. (Opp. 31.)

As to whether a strong inference of negligence is required, Plaintiff claims that the “[b]etter reasoned cases” have not imposed this requirement.⁷ (Opp. 31 (quoting *Fresno Cnty. Emp. Ret. Ass’n v. comScore, Inc.*, 268 F. Supp. 3d 526, 559 (S.D.N.Y. 2017).) But other cases have required that strong inference. *E.g.*, *In re Bemis Co. Sec. Litig.*, 512 F. Supp. 3d 518, 529 (S.D.N.Y. 2021); *Bond Opportunity Fund v. Unilab Corp.*, 2003 WL 21058251, *4 (S.D.N.Y. 2003). That reasoning is consistent with the PSLRA’s application to “any private action” under the Exchange Act, 15 U.S.C. §78u-4(b)(2)(A), as well as the Supreme Court’s admonition to construe implied rights of action under the Exchange Act with “narrow dimensions.” *Stoneridge Inv. Partners, LLC v. Sci.-Atl., Inc.*, 552 U.S. 148, 167 (2008). Under any standard, Plaintiff’s conclusory assertions do not suffice.

⁷ Contrary to Plaintiff’s implication (Opp. 32), the Second Circuit did not decide this question in *DeKalb County Pension Fund v. Transocean Ltd.*, 817 F.3d 393 (2d Cir. 2016).

IV. PLAINTIFF DOES NOT PLEAD CONTROL PERSON LIABILITY.

Because Plaintiff has failed to allege a primary violation under Sections 11, 12, or 14(a), his control-person claims also must be dismissed. Plaintiff is incorrect that the sufficiency of a control-person pleading cannot be resolved on a motion to dismiss. *See In re Weight Watchers Int'l Inc. Sec. Litig.*, 504 F. Supp. 3d 224, 264 (S.D.N.Y. 2020) (Plaintiff's "conclusory allegations... are insufficient to establish control" for both Section 15 and 20(a) claims); *Emerson v. Mutual Fund Series Tr.*, 393 F. Supp. 3d 220, 250 (E.D.N.Y. 2019) (plaintiff's "boilerplate statement of control status" "fail[ed] to allege actual control" under Section 15).

Plaintiff has no response to the fact that Messrs. Pulire and Willis "may not determine... fair value" 17 C.F.R. §270.2a-5(b)(2). Nor does Plaintiff contest that the Complaint does not allege that they exercised any control over the alleged misstatements. (MTD 35.) Plaintiff also does not dispute that he alleges that Defendants Principal Street Partners and Easterly Investment Partners provided advice and guidance, not control. (MTD 35.) Plaintiff's own authority recognizes that the Complaint must plead that Defendants "influence[d] and control[led]... the content and dissemination of the various statements," and that "bare assertion[s]... would be insufficient." *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 413, 426-27 (S.D.N.Y. 2010).

In Plaintiff's view, it "makes little sense" to "graft a 'culpable participation' element onto nonfraud claims." (Opp. 33.) Courts disagree. Section 20(a) requires Plaintiff to plead that each Defendant was a "culpable participant" *in addition to* pleading control, *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 108 (2d Cir. 2007), even where the underlying claim sounds in negligence, *Furlong Fund LLC v. VBI Vaccines, Inc.*, 2016 WL 1181710, at *3, *6 (S.D.N.Y. Mar. 25, 2016).

CONCLUSION

Having now amended twice, Plaintiff's Second Amended Complaint should be dismissed with prejudice.

/s/ Joshua A. Dunn

Joshua A. Dunn
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, New York 10019
Telephone: (212) 407-7791
jdunn@vedder.com

Thomas P. Cimino, Jr. (*pro hac vice*)
Steven J. Dollear (*pro hac vice*)
Nusra Ismail (*pro hac vice*)
VEDDER PRICE P.C.
222 N. LaSalle Street, Suite 2400
Chicago, Illinois 60601
Telephone: (312) 609-7500
tcimino@vedder.com
sdollear@vedder.com
nismail@vedder.com

*Counsel for Managed Portfolio Series Trust,
Benjamin J. Eirich, and Brian R. Wiedmeyer*

/s/ John G. Moon

John G. Moon
Adrienne M. Ward
Sahand Farahati
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
Telephone: (212) 451-2300
jmoon@olshanlaw.com
award@olshanlaw.com
sfarahati@olshanlaw.com

*Counsel for Robert J. Kern, David A.
Massart, David M. Swanson, and Ann Clark
Johnston-Rush, Executrix for Estate of
Leonard Rush*

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.
David M.J. Rein
Morgan R. Knudtsen
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
giuffrar@sullcrom.com
reind@sullcrom.com
knudtsenm@sullcrom.com

*Counsel for James Alpha Trust d/b/a Easterly
Funds Trust, Easterly Investment Partners
LLC, Easterly Securities LLC, Troy E. Willis,
Charlie S. Pulire, Darrel Crate, Michael J.
Montague, Neil Medugno, and A. Clayton
Spencer*

/s/ Joseph E. Bain

Joseph E. Bain
JONES WALKER LLP
261 Madison Avenue, 9th Floor
New York, New York 10016
Telephone: (646) 735-6900
jbain@joneswalker.com

Alexander Breckinridge (*pro hac vice*)
Mark A. Cunningham (*pro hac vice*)
Robert B. Bieck, Jr. (*pro hac vice*)
JONES WALKER LLP
201 St. Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-8138
abreckinridge@joneswalker.com
mcunningham@joneswalker.com
rbieck@joneswalker.com

*Counsel for Principal Street Partners, LLC
n/k/a Calydon Capital, LLC*

/s/ James K. Goldfarb

James K. Goldfarb

Cameron S. Matheson

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas, 42nd Floor

New York, New York 10020

Telephone: (212) 489-4230

JamesGoldfarb@dwt.com

CameronMatheson@dwt.com

Counsel for Quasar Distributors, LLC

May 7, 2026

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 104) because it contains 4,285 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 May 7, 2026

/s/ Morgan R. Knudtsen
Morgan R. Knudtsen

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2026 the foregoing document was electronically filed with the Clerk of the Court and served upon counsel of record through the Court's ECF filing system.

/s/ David M.J. Rein

David M.J. Rein