

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

IN RE EASTERLY ROCMUNI HIGH  
INCOME MUNICIPAL BOND FUND

Civ. Action No. 25-CV-6028-DLC

**MEMORANDUM OF LAW IN OPPOSITION TO LEAD PLAINTIFF'S MOTION TO  
STRIKE AND IN OPPOSITION TO DEFENDANTS' REQUEST FOR JUDICIAL  
NOTICE, OR, IN THE ALTERNATIVE, TO CONVERT THE MOTION TO DISMISS  
INTO A MOTION FOR SUMMARY JUDGMENT**

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*

May 7, 2026

**TABLE OF CONTENTS**

	<i>Page</i>
<b>PRELIMINARY STATEMENT</b> .....	1
<b>ARGUMENT</b> .....	3
<b>I. PLAINTIFF’S MOTION TO STRIKE SEEKS IMPERMISSIBLE RELIEF AND IS AN UNAUTHORIZED SUPPLEMENTAL MOTION TO DISMISS OPPOSITION BRIEF</b> .....	3
<b>II. THE COURT MAY PROPERLY CONSIDER EACH CHALLENGED EXHIBIT</b> .....	6
<b>A. The Court Should Consider Defendants’ Exhibits</b> .....	6
1. The <i>Morningstar</i> Article May Be Considered As a “Storm Warning” .....	7
2. Defendants’ Public Filings With the SEC Are Judicially Noticeable.....	10
3. Publicly Available Municipal Securities Rulemaking Board Documents Are Judicially Noticeable .....	11
4. The Funds’ Public Securities Prices Are Judicially Noticeable.....	14
5. Public News Reports Are Judicially Noticeable.....	15
<b>B. The Court May Consider Defendants’ Summary Exhibits</b> .....	16
<b>III. RULE 12(D) CONVERSION IS UNWARRANTED</b> .....	20
<b>CONCLUSION</b> .....	21

**TABLE OF AUTHORITIES**

	<i>Page(s)</i>
<b>Cases</b>	
<i>In re Acadia Pharmaceuticals Inc. Securities Litigation</i> , 2020 WL 2838686 (S.D. Cal. June 1, 2020) .....	18
<i>Amorosa v. Ernst &amp; Young LLP</i> , 682 F. Supp. 2d 351 (S.D.N.Y. 2010).....	15
<i>Anderson v. Intel Corp. Investment Policy Committee</i> , 579 F. Supp. 3d 1133 (N.D. Cal. 2022) .....	9-10
<i>Andrews v. Freemantlemedia N.A., Inc.</i> , 2014 WL 6686590 (S.D.N.Y. Nov. 20, 2014).....	5-6
<i>Armand v. Osborne</i> , 2014 WL 723381 (E.D.N.Y. Feb. 24, 2014).....	21
<i>In re Bank of America AIG Disclosure Securities Litigation</i> , 980 F. Supp. 2d 564 (S.D.N.Y. 2013).....	2
<i>Barbara v. MarineMax, Inc.</i> , 2012 WL 6025604 (E.D.N.Y. Dec. 4, 2012) .....	13
<i>Bazelle v. Novocure Ltd.</i> , 2025 WL 843668 (S.D.N.Y. Mar. 18, 2025) .....	2
<i>In re Bear Stearns Companies, Inc. Securities, Derivative &amp; ERISA Litigation</i> , 763 F. Supp. 2d 423 (S.D.N.Y. 2011).....	19
<i>Citadel Equity Fund Ltd. v. Aquila, Inc.</i> , 168 F. App'x 474 (2d Cir. 2006) .....	11
<i>Citigroup, Inc. v. Wachovia Corp.</i> , 613 F. Supp. 2d 485 (S.D.N.Y. 2009).....	4
<i>Connolly v. Wood-Smith</i> , 2012 WL 7809099 (S.D.N.Y. May 14, 2012) .....	6
<i>Cosgrove v. Oregon Chai, Inc.</i> , 520 F. Supp. 3d 562 (S.D.N.Y. 2021).....	9
<i>Dingee v. Wayfair Inc.</i> , 2016 WL 3017401 (S.D.N.Y. May 24, 2016) .....	7
<i>Driessen v. Natwest Bank PLC</i> , 2013 WL 12073444 (D. Conn. Oct. 25, 2013) .....	9

<i>ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.</i> , 553 F.3d 187 (2d Cir. 2009).....	14
<i>Elite Union Installations, LLC v. National Fire Insurance Co.</i> , 559 F. Supp. 3d 211 (S.D.N.Y. 2021).....	12
<i>Evans v. Associated Banc-Corp.</i> , 2022 WL 4638092 (E.D. Wis. Sept. 30, 2022).....	10
<i>Exchange Listing, LLC v. Inspira Technologies, Ltd.</i> , 661 F. Supp. 3d 134 (S.D.N.Y. 2023).....	14
<i>Executive Park Partners LLC v. Benicci Inc.</i> , 2023 WL 3739093 (S.D.N.Y. May 31, 2023).....	13
<i>Fair Housing Justice Center Inc. v. Lighthouse Living LLC</i> , 2021 WL 4267695 (S.D.N.Y. Sept. 20, 2021).....	12
<i>Falberg v. Goldman Sachs Grp., Inc.</i> , 2020 WL 3893285 (S.D.N.Y. July 9, 2020).....	20
<i>Finn v. Barney</i> , 471 Fed. App'x 30 (2d Cir. 2012).....	17
<i>In re Frito-Lay North America, Inc. All Natural Litigation</i> , 2013 WL 4647512 (E.D.N.Y. Aug. 29, 2013).....	15
<i>In re FuBoTV Inc. Securities Litigation</i> , 2024 WL 1330001 (S.D.N.Y. Mar. 28, 2024).....	2
<i>Ganino v. Citizens Utilities Co.</i> , 228 F.3d 154 (2d Cir. 2000).....	15
<i>In re Garrett Motion Inc. Securities Litigation</i> , 2023 WL 2744029 (S.D.N.Y. Mar. 31, 2023).....	17-18
<i>Garber v. Legg Mason, Inc.</i> , 347 F. App'x 665 (2d Cir. 2009).....	2, 14
<i>Glantz v. James River Grp. Holdings, Ltd.</i> , 2025 WL 278440 (S.D.N.Y. Jan. 23, 2025).....	15
<i>Great Mill Rock LLC v. Stellex Capital Management LP</i> , 2020 WL 5370626 (S.D.N.Y. Sept. 4, 2020).....	16
<i>Halperin v. eBanker USA.com, Inc.</i> , 295 F.3d 352 (2d Cir. 2002).....	14, 20

<i>Hesse v. Godiva Chocolatier, Inc.</i> , 463 F. Supp. 3d 453 (S.D.N.Y. 2020).....	16
<i>Honig v. Hansen</i> , 2021 WL 4651475 (S.D.N.Y. Oct. 6, 2021).....	3
<i>Huang v. AirMedia Grp. Inc.</i> , 2017 WL 1157134 (S.D.N.Y. Mar. 27, 2017) .....	2
<i>In re Hub Cyber Security Ltd.</i> , 2025 WL 872078 (S.D.N.Y. Mar. 20, 2025) .....	20
<i>IHS Dialysis Inc. v. Davita, Inc.</i> , 2013 WL 1309737 (S.D.N.Y. March 31, 2013) .....	5
<i>Industriens Pensionsforsikring v. Becton, Dickinson &amp; Co.</i> , 2021 WL 2850417 (D.N.J. July 8, 2021).....	19
<i>Jones v. Pfizer</i> , 2011 WL 13257527 (S.D.N.Y. April 5, 2011) .....	4
<i>JS Barkats PLLC v. Blue Sphere Corp.</i> , 2017 WL 2930935 (S.D.N.Y. July 10, 2017) .....	11
<i>Karabas v. TC Heartland LLC</i> , 770 F. Supp. 3d 454 (E.D.N.Y. 2025) .....	12
<i>Koch v. Christie’s International PLC</i> , 785 F. Supp. 2d 105 (S.D.N.Y. 2011).....	8
<i>Kramer v. Time Warner Inc.</i> , 937 F.2d 767 (2d Cir. 1991).....	6
<i>Lee v. Delta Air Lines, Inc.</i> , 2023 WL 3592153 (S.D.N.Y. Apr. 26, 2023).....	21
<i>Lee v. Springer Nature America, Inc.</i> , 769 F. Supp. 3d 234 (S.D.N.Y. 2025).....	3
<i>Levy v. Verizon Information Services, Inc.</i> , 498 F. Supp. 2d 586 (E.D.N.Y. 2007) .....	22
<i>Locksley v. United States</i> , 2005 WL 1459101 (S.D.N.Y. June 15, 2005) .....	3-4
<i>Lynn M. Kennis v. First Eagle Investment Management, LLC</i> , 2015 WL 5886178 (D. Del. Oct. 8, 2015) .....	10

<i>Malin v. XL Capital Ltd.</i> , 499 F. Supp. 2d 117 (D. Conn. 2007).....	19, 20
<i>Mallett v. Town of Huntington</i> , 799 F. Supp. 3d 117 (E.D.N.Y. 2025) .....	13
<i>Melito v. American Eagle Outfitters, Inc.</i> , 2017 WL 6541535 (S.D.N.Y. June 9, 2017) .....	18
<i>In re Merrill Lynch Tyco Research Securities Litigation</i> , 2004 WL 305809 (S.D.N.Y. Feb. 18, 2004).....	7, 17
<i>Michigan Carpenters’ Pension Fund v. Rayonier Advanced Materials, Inc.</i> , 2019 WL 1429667 (M.D. Fla. Mar. 29, 2019) .....	19
<i>Micholle v. Ophthotech Corp.</i> , 2019 WL 4464802 (S.D.N.Y. Sept. 17, 2019).....	2, 19, 20
<i>In re Moody’s Corp. Securities Litigation</i> , 599 F. Supp. 2d 493 (S.D.N.Y. 2009).....	15
<i>Novie v. Village of Montebello</i> , 2012 WL 3542222 (S.D.N.Y. Aug. 16, 2012).....	7
<i>Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC</i> , 2023 WL 9102400 (S.D.N.Y. Dec. 29, 2023) .....	11
<i>In re NYSE Specialists Securities Litigation</i> , 260 F.R.D. 55 (S.D.N.Y. 2009) .....	18
<i>In re Paine Webber Securities Litigation</i> , 1992 WL 725359 (S.D.N.Y. Sept. 18, 1992).....	18-19
<i>Pennsylvania Public School Employees’ Retirement System v. Bank of America Corp.</i> , 874 F. Supp. 2d 341 (S.D.N.Y. 2012).....	8
<i>Patsy’s Italian Restaurant, Inc. v. Banas</i> , 575 F. Supp. 2d 427 (E.D.N.Y. 2008) .....	9
<i>Pehlivanian v. China Gerui Advanced Materials Grp., Ltd.</i> , 153 F. Supp. 3d 628 (S.D.N.Y. 2015).....	11
<i>Phillips v. Cobham Advanced Electronic Solutions, Inc.</i> , 2024 WL 3228097 (N.D. Cal. June 28, 2024).....	9
<i>Pitman v. Immunovant, Inc.</i> , 2024 WL 964258 (E.D.N.Y. Feb. 25, 2024).....	18

<i>In re Proshares Trust II Securities Litigation</i> , 2020 WL 71007 (S.D.N.Y. Jan. 3, 2020) .....	10
<i>In re PTC Therapeutics, Inc. Securities Litigation</i> , 2017 WL 3705801 (D.N.J Aug. 28, 2017). .....	18
<i>Garden City Employees' Retirement System v. Anixter International, Inc.</i> , 2011 WL 1303387 (N.D. Ill. Mar. 31, 2011).....	18
<i>SEC. v. Boock</i> , 2011 WL 3792819 (S.D.N.Y. Aug. 25, 2011).....	4
<i>SEC v. Rosenberger</i> , 2023 WL 1928093 (S.D.N.Y. Feb. 10, 2023).....	4
<i>Schubert v. City of Rye</i> , 775 F. Supp. 2d 689 (S.D.N.Y. 2011) .....	6-7
<i>In re Securities Litigation BMC Software, Inc.</i> , 183 F. Supp. 2d 860 (S.D. Tex. 2001) .....	19
<i>Staehr v. Hartford Financial Services Group, Inc.</i> , 547 F.3d 406 (2d Cir. 2008).....	8, 21
<i>Steinberg v. Nationwide Mutual Insurance Co.</i> , 224 F.R.D. 67 (E.D.N.Y. 2004).....	19
<i>Stewart v. Loring Estates LLC</i> , 2020 WL 3002363 (E.D.N.Y. Feb. 26, 2020).....	8
<i>Sun v. TAL Education Grp.</i> , 2023 WL 6394413 (S.D.N.Y. Sept. 29, 2023).....	17-18
<i>Vasell v. SeatGeek, Inc.</i> , 2025 WL 240912 (S.D.N.Y. Jan. 17, 2025) .....	9
<i>Wachtel v. National R.R. Passenger Corp.</i> , 2012 WL 292352 (S.D.N.Y. Jan. 30, 2012) .....	2
<i>In re Weight Watchers International Inc. Securities Litigation</i> , 504 F. Supp. 3d 224 (S.D.N.Y. 2020).....	11
<i>Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC</i> , 127 F. Supp. 3d 156 (S.D.N.Y. 2015).....	3, 21
<i>White v. Chevron Corp.</i> , 2017 WL 2352137 (N.D. Cal. May 31, 2017).....	10

*Wilcox v. Georgetown University*,  
2019 WL 132281 (D.D.C. Jan. 8, 2019).....10

*In re WorldCom, Inc. Securities Litigation*,  
2003 WL 22701241 (S.D.N.Y. Nov. 17, 2003)..... 4-5

*Zoidis v. T. Rowe Price Associates, Inc.*,  
No. 1:16-cv-02786-GLR (N.D. Cal. July 1, 2016).....9

*In re Zyprexa Products Liability Litigation*,  
549 F. Supp. 2d 496 (E.D.N.Y. 2008) .....16

**Statutes and Rules**

15 U.S.C. §78o-4 .....12

Federal Rule of Civil Procedure 7 .....3

Federal Rule of Civil Procedure 12(d).....2, 21, 22

Federal Rule of Civil Procedure 12(f) ..... 1, 2-3

Federal Rule of Evidence 201.....6, 7, 9, 12, 15

Federal Rule of Evidence 1006.....19

## PRELIMINARY STATEMENT

Plaintiff's motion to strike 18 exhibits filed with Defendants' motion to dismiss is meritless and, in reality, is an unauthorized attempt to circumvent the motion-to-dismiss word-count limits imposed by the Court. Plaintiff's motion ("Motion" or "Mot") is interspersed with arguments about why Defendants' motion to dismiss should be denied. Plaintiff's Motion even repeats assertions verbatim from his motion to dismiss opposition brief and then expands upon them. The Court should not tolerate this gamesmanship.

Plaintiff's objections generally are formulaic. Plaintiff asserts conclusorily that the exhibit is "not cited, referenced or relied upon in the Complaint" or lacks "adjudicative facts." (Mot-12, 14-17.) Then, Plaintiff spends pages supplementing his motion to dismiss opposition arguments. For example, Plaintiff spends five pages (Mot-7-12) arguing why a December 2023 *Morningstar* article—published more than a year-and-a-half before this action was filed, which highlighted the "warning sign" of the Principal Street High Income Municipal Fund's ("Principal Street Fund") "high[]" yields, "defaulted bonds," and "[r]isky nonrated" bonds (Exh-3, at 5)<sup>1</sup>—supposedly did not "put investors on notice of the claims" (Mot-9).

Even putting aside its transparent purpose, Plaintiff's Motion, which demands that the Court should not consider materials that other courts routinely consider on motions to dismiss federal securities actions, should be denied:

*First*, Federal Rule of Civil Procedure 12(f) limits motions to strike to excising "from a *pleading* an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" (emphasis added). Defendants' motion to dismiss and its accompanying exhibits are not

---

<sup>1</sup> All "Exhibit" or "Ex" references are to Defendants' exhibits attached to the Declaration of David M.J. Rein, dated March 23, 2026 (ECF 113) filed in support of Defendants' motion to dismiss. References to "Complaint" or "SAC" are to Plaintiff's Second Amended Complaint (ECF 98). References to "MTD Br." are to the Defendants' motion to dismiss opening brief.

“pleadings” and are thus beyond Rule 12(f)’s scope. Plaintiff never mentions this Rule or addresses how his Motion satisfies its literal criteria. Courts routinely deny similar motions to strike exhibits supporting a motion to dismiss as “procedurally improper” on exactly these grounds. *Bazelle v. Novocure Ltd.*, 2025 WL 843668, at \*6 (S.D.N.Y. Mar. 18, 2025).

*Second*, the Court may properly consider each challenged Exhibit. The challenged Exhibits are documents, or excerpts of documents, that are judicially noticeable or “necessarily relied on by the plaintiff in drafting the complaint.” *Wachtel v. Nat’l R.R. Passenger Corp.*, 2012 WL 292352, at \*1 (S.D.N.Y. Jan. 30, 2012). Others are publications offered 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), or mere compilations of voluminous material provided for the Court’s convenience. In ruling on motions to dismiss securities actions, courts regularly consider such exhibits. *See, e.g., In re FuBoTV Inc. Sec. Litig.*, 2024 WL 1330001, at \*4 (S.D.N.Y. Mar. 28, 2024) (the court “may take judicial notice of well-publicized stock prices....”); *Micholle v. Ophthotech Corp.*, 2019 WL 4464802, at \*16 n.19 (S.D.N.Y. Sept. 17, 2019) (declining to strike charts summarizing SEC filings because they were “compilations of voluminous data ‘that cannot be conveniently examined by the court.’”); *Huang v. AirMedia Grp. Inc.*, 2017 WL 1157134, at \*5 (S.D.N.Y. Mar. 27, 2017) (on a motion to dismiss, “the Court may consider... ‘legally required public disclosure documents filed with the SEC’”); *In re Bank of Am. AIG Disclosure Sec. Litig.*, 980 F. Supp. 2d 564, 570 (S.D.N.Y. 2013) (“Matters of which judicial notice can be taken include press coverage establishing what information existed in the public domain during periods relevant to the plaintiffs’ claims.”), *aff’d*, 566 F. App’x 93 (2d Cir. 2014).

*Third*, because the Court may properly consider the challenged Exhibits on a motion to dismiss, conversion is not warranted under Rule 12(d). *Wells Fargo Bank, N.A. v.*

*Wrights Mill Holdings, LLC*, 127 F. Supp. 3d 156, 166 (S.D.N.Y. 2015) (court may properly “take judicial notice of certain matters of public record without converting the motion into one for summary judgment”).

## ARGUMENT

### I. PLAINTIFF’S MOTION TO STRIKE SEEKS IMPERMISSIBLE RELIEF AND IS AN UNAUTHORIZED SUPPLEMENTAL MOTION TO DISMISS OPPOSITION BRIEF.

Tellingly, Plaintiff does not once mention Federal Rule of Civil Procedure 12(f) or any other Rule purportedly authorizing his Motion. Indeed, Plaintiff has no valid procedural basis for his Motion.

Rule 12(f) permits courts to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Under Rule 7, the motion to dismiss Exhibits plainly are not “pleadings.”<sup>2</sup> Nor are the Exhibits an “insufficient defense” or “redundant, immaterial, impertinent, or scandalous matter,” Fed. R. Civ. P. 12(f), and Plaintiff does not claim otherwise. Because the Federal Rules of Civil Procedure do not provide for “strick[ing] documents other than pleadings,” courts regularly deny as procedurally improper motions like Plaintiff’s seeking to strike motion to dismiss exhibits. *Honig v. Hansen*, 2021 WL 4651475, at \*3 (S.D.N.Y. Oct. 6, 2021). *See also Lee v. Springer Nature Am., Inc.*, 769 F. Supp. 3d 234, 246 n.4, 264 (S.D.N.Y. 2025) (“Plaintiff’s motion to strike is denied as procedurally improper” because “Rule 12(f) does not authorize this court to strike documents other than pleadings.”); *Locksley v. U.S.*, 2005 WL 1459101, at \*4 (S.D.N.Y. June 15, 2005) (denying motion to strike materials that are “not a pleading subject to motions to strike”).

---

<sup>2</sup> Federal Rule of Civil Procedure 7(a) defines “pleadings” as “a complaint,” “an answer to a complaint,” “an answer to a counterclaim designated as a counterclaim,” “an answer to a crossclaim,” “a third-party complaint,” “an answer to a third-party complaint,” and “if the court orders one, a reply to an answer.”

Beyond this disqualifying procedural flaw, motions to strike are “disfavored and will be denied unless the matter asserted clearly has no bearing on the dispute or the matter is significantly prejudicial to one of the parties.” *Citigroup, Inc. v. Wachovia Corp.*, 613 F. Supp. 2d 485, 489 (S.D.N.Y. 2009). As described in Section II, below, all Exhibits are relevant to the adequacy of Plaintiff’s pleading and, thus, relate to the central “dispute” of this case. Nor does Plaintiff identify any prejudice warranting his requested relief. Plaintiff’s criticisms instead center around the weight the Court should afford the Exhibits, or the merits of Defendants’ motion to dismiss, and do not state a valid basis to strike any Exhibit.

Plaintiff vaguely asserts that this Court should exercise “discretion” to exclude the challenged Exhibits (Mot-3), but the case on which he relies involves a defendant declaration presenting over 150 exhibits, where plaintiffs’ exhibits attached to the complaint were also stricken, and plaintiffs were directed to file an amended complaint. *Jones v. Pfizer*, 2011 WL 13257527, at \*1 (S.D.N.Y. April 5, 2011). *SEC v. Rosenberger* (Mot-3) is also nothing like here, as it concerned whether private communications and internal documents “not quoted, cited or relied upon” in the complaint could be “appropriately considered” on a motion to dismiss. 2023 WL 1928093, at \*3 (S.D.N.Y. Feb. 10, 2023) (Cote, J.). If anything, *Rosenberger* supports Defendants as it makes clear that “a court deciding a motion to dismiss may ‘consider... legally required public disclosure documents filed with the SEC,’” a category of documents that Plaintiff here seeks to exclude. *Id.* at \*3. *See also SEC v. Boock*, 2011 WL 3792819 at \*10 (S.D.N.Y. Aug. 25, 2011) (“Wong asks that several of the SEC’s exhibits be stricken... His request is denied.”) (Cote, J.); *In re WorldCom, Inc. Sec. Litig.*, 2003 WL 22701241, at \*8 (S.D.N.Y. Nov. 17, 2003) (“The motion... to strike the exhibits... is denied.”) (Cote, J.).

Plaintiff could not be clearer that his 22-page motion to strike is designed to circumvent the Court’s word-limit order on the motion to dismiss briefing.<sup>3</sup> In fact, Plaintiff repeats, almost verbatim, arguments he makes in his brief opposing dismissal (“MTD Opp’n”), accompanying them with additional arguments against dismissal. *Compare* Mot-18 (“[T]he absence of these defaults in the Fund’s 2024 financial statements would lead a reasonable mutual fund investor to believe the Fund’s portfolio had fewer defaulted securities compared to 2022 or 2023, and the Fund’s assets were stronger credits than, in fact, they were.”) *with* MTD Opp’n at 21 (“The absence of these defaults in the Fund’s 2024 financial statements would lead a reasonable investor to believe the Fund’s portfolio had fewer defaulted securities compared to 2022 or 2023, and therefore the Fund’s assets were stronger credits than, in fact, they were.”).<sup>4</sup> This tactic of circumventing motion-to-dismiss briefing limits through a baseless motion to strike should be rejected. *See IHS Dialysis Inc. v. Davita, Inc.*, 2013 WL 1309737, at \*3 (S.D.N.Y. March 31, 2013) (“[I]t appears from the content of Defendant’s papers that the separately briefed ‘Motion to Strike’ is simply an attempt to assert additional arguments in support of Defendant’s Motion to Dismiss, and to evade the page limits for motions.”); *Andrews v. Freemantlemedia N.A., Inc.*, 2014 WL 6686590, at \*4, \*15 (S.D.N.Y. Nov. 20, 2014) (plaintiffs’ additional motions filed during motion-to-dismiss briefing “rais[ing] arguments that plaintiffs could have raised but chose not to

---

<sup>3</sup> *See, e.g.*, Mot-5-12 (dedicating over five pages to merits arguments in opposition to Exhibit 3); Mot-17-19 (opposing Exhibit 39-40 by stating in two sentences that the Exhibits are not “cited, referred to or relied upon in the Complaint” and do not “contain ‘adjudicative facts,’” and then offering two *pages* of counterarguments to Defendants’ motion to dismiss).

<sup>4</sup> *Compare also* Mot-7 (“At best, the *Morningstar* editorial suggests the potential for liquidity, valuation and concentration risks—risks inherent to all mutual fund investors—but not the probability of wrongful conduct...”) *with* MTD Opp’n-25 (same); Mot-7 (*Morningstar* article “repeats the risk warnings that are set forth in Fund’s registration statements and prospectuses that the Complaint alleges were materially false and misleading...”) *with* MTD Opp’n-3 (*Morningstar* article “repeats the same risk disclosures set forth in the Fund’s registration statements and prospectuses that the Complaint alleges were materially false and misleading...”).

include in their opposition brief” were “a blatant end-run around this Court’s page limitations”), *aff’d*, 613 F. App’x 67 (2d Cir. 2015).

## **II. THE COURT MAY PROPERLY CONSIDER EACH CHALLENGED EXHIBIT.**

### **A. The Court Should Consider Defendants’ Exhibits.**

The Rein Declaration attaches, and Plaintiff challenges, five categories of publicly available materials as exhibits: (i) a “storm warning” media report; (ii) filings with the Securities and Exchange Commission (“SEC”); (iii) public records issued by the Municipal Securities Rulemaking Board (“MSRB”) or posted on its public repository; (iv) historical securities prices; and (v) publicly accessible analyst reports and media publications. Under established principles in this Circuit, the Court may consider each challenged Exhibit.

On a motion to dismiss, courts may consider documents “necessarily relied on by the plaintiff in drafting the complaint,” *Connolly v. Wood-Smith*, 2012 WL 7809099, at \*5 (S.D.N.Y. May 14, 2012), *report and recommendation adopted as modified*, 2013 WL 1285168 (S.D.N.Y. Mar. 28, 2013), and “matters of which judicial notice may be taken under [Federal Rule of Evidence 201].” *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). Under Federal Rule of Evidence 201(b), a court may take judicial notice of any adjudicative fact that is either “(1) generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Moreover, courts may take judicial notice of materials that satisfy the requirements of Rule 201, even if the document is not cited, referred to or relied upon in the Complaint. *Schubert v. City of Rye*, 775 F. Supp. 2d 689, 698 (S.D.N.Y. 2011) (“The court may... consider matters of which judicial notice may be taken, even if the corresponding documents are not attached to or incorporated by reference in the complaint.”).

As explained in Defendants’ motion to dismiss opening brief, (MTD Br.-5 n.2, 28 n.14), the Exhibits are not submitted for the truth of their contents, but rather for the fact of their publication, which Plaintiff concedes is proper for judicial notice. (*See, e.g.*, Mot-11); *see also Novie v. Village of Montebello*, 2012 WL 3542222, at \*10 (S.D.N.Y. Aug. 16, 2012) (taking judicial notice of public documents “for the fact that they exist and the facts of what is in them, but not for their truth”); *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 2004 WL 305809, at \*4 n.3 (S.D.N.Y. Feb. 18, 2004) (news articles are judicially noticeable for “the fact of their publication”).

To the extent Plaintiff faults Defendants for supposedly not “supply[ing] necessary information” to the Court (Mot-6), Defendants properly provided the basis on which the Court may consider each of the Exhibits. (*See* MTD Br.-5 n.2, 28 n.14.) Courts frequently consider motions to dismiss exhibits without the need to burden the Court with motions for consideration. *Dingee v. Wayfair Inc.*, 2016 WL 3017401, at \*2 (S.D.N.Y. May 24, 2016) (taking judicial notice of “twenty such analyst reports” submitted with defendants’ motion to dismiss for “the fact that press coverage, prior lawsuits or regulatory filings contained certain information”) (Cote, J.); Fed. R. Evid. 201(c) (the court “may take judicial notice on its own,” and it “must take judicial notice if a party requests it and the court is supplied with the necessary information”).

**1. The *Morningstar* Article May Be Considered As a “Storm Warning.”**

Plaintiff seeks that the Court not consider Exhibit 3, a December 2023 *Morningstar* article detailing the risks to Plaintiff’s investment that Plaintiff claims were hidden. In complaining about the supposed lack of “evidentiary foundation” to consider the *Morningstar* article, Plaintiff ignores that Defendants submitted it for the fact of its publication, not the truth of its contents. Defendants submitted Exhibit 3 as “media coverage” serving as a “storm warning”

that triggered inquiry notice.<sup>5</sup> *Staeher v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 427 (2d Cir. 2008).

The Second Circuit expressly permits judicial notice of publications like the *Morningstar* article for this limited purpose. *See Staeher*, 547 F.3d at 425 (“[I]t is proper to take judicial notice of the fact that press coverage... contained certain information... in deciding whether so-called ‘storm warnings’ were adequate to trigger inquiry notice.”). Plaintiffs entirely ignore the well-established storm-warning doctrine in this Circuit in which media reports are commonly invoked in support of limitations arguments on motions to dismiss. *See Stewart v. Loring Estates LLC*, 2020 WL 3002363, at \*12 n.17 (E.D.N.Y. Feb. 26, 2020) (“I take judicial notice of the news articles described above not for the truth of the matters reported in them but rather as evidence of storm warnings of the Kontogiannis fraudulent scheme”), *report and recommendation adopted sub nom, Parsaram v. Chicago Title Ins. Co.*, 2020 WL 1231783 (E.D.N.Y. Mar. 13, 2020); *Koch v. Christie’s Int’l PLC*, 785 F. Supp. 2d 105, at 111-112 (S.D.N.Y. 2011) (considering “news articles” identified by defendants “‘in deciding whether so-called “storm warnings” were adequate to trigger inquiry notice’”), *aff’d*, 699 F.3d 141 (2d Cir. 2012); *Pa. Pub. Sch. Emps.’ Ret. Sys. v. Bank of Am. Corp.*, 874 F. Supp. 2d 341, 365 (S.D.N.Y. 2012) (same).

Plaintiff asserts that Defendants have not proven that this article, available on the public *Morningstar* website, is “generally known,” “available to the public,” or from sources “whose accuracy cannot reasonably be questioned.” (Mot-6.) This, at most, goes to the weight to accord the article, not whether to strike it. Rule 201 does not require that an online publication be generally known or that it has been widely circulated. Instead, “it is generally proper to take judicial notice of articles and Web sites published on the Internet.” *Patsy’s Italian Rest., Inc. v.*

---

<sup>5</sup> *See infra* § II.E, regarding the one use of the *Morningstar* article to “show that information... was publicly available” in “press articles.” (MTD Br.-9 n.5.)

*Banas*, 575 F. Supp. 2d 427, 443 n.18 (E.D.N.Y. 2008), *aff'd*, 658 F.3d 254 (2d Cir. 2011). This is “because they are easily verifiable through a simple web search, and thus are ‘generally known within the trial court’s territorial jurisdiction’ and ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” *Driessen v. Natwest Bank PLC*, 2013 WL 12073444, at \*2 n.2 (D. Conn. Oct. 25, 2013) (determining that web addresses are judicially noticeable), *aff'd*, 580 F. App’x 32 (2d Cir. 2014).<sup>6</sup>

Plaintiff points to cases in which courts declined to consider *Morningstar* materials, but in each a party sought to use the *Morningstar* materials for the truth of their contents. *See, e.g.*, Request for Judicial Notice at 5, *Zoidis v. T. Rowe Price Assocs., Inc.*, No. 1:16-cv-02786-GLR (N.D. Cal. July 1, 2016), ECF 35. Considering a published report, including from *Morningstar*, for the fact of its publication is entirely distinct and commonly accepted by courts. *Phillips v. Cobham Advanced Electronic Solutions, Inc.*, 2024 WL 3228097, at \*5 (N.D. Cal. June 28, 2024) (“Courts regularly take notice of publicly available government records, *Morningstar* publications, and fund fact sheets such as those submitted by Defendants.”); *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 579 F. Supp. 3d 1133, 1145 (N.D. Cal. 2022) (taking notice of *Morningstar* publication); *White v. Chevron Corp.*, 2017 WL 2352137, at \*5 (N.D. Cal. May 31, 2017) (taking judicial notice of *Morningstar* report), *aff'd*, 752 F. App’x 453 (9th Cir. 2018); *Wilcox v. Georgetown Uni.*, 2019 WL 132281, at \*4 n.5 (D.D.C. Jan. 8, 2019) (“The Court also

---

<sup>6</sup> Plaintiff also argues that Defendants have provided no evidence that the article was not restricted from view by a paywall or paid subscription requirement or that it existed on the date of its listed publication. (Mot-6.) However, a simple web search can confirm that the *Morningstar* website is not restricted by a paywall. Moreover, checking “the Internet Archive Wayback Machine (<https://web.archive.org>)” confirms the article was available on *Morningstar*’s website in December 2023. *Vasell v. SeatGeek, Inc.*, 2025 WL 240912, at \*2 n.5 (S.D.N.Y. Jan. 17, 2025); *see also Cosgrove v. Oregon Chai, Inc.*, 520 F. Supp. 3d 562, 581 n.5 (S.D.N.Y. 2021) (taking judicial notice of a former version of defendant’s website, accessed via archive.org, at the motion to dismiss stage).

takes judicial notice of publicly available definitions and information on the various funds available through *Morningstar*, a well-respected investment research firm.”).

Plaintiff’s convoluted assertion that this Court cannot consider Exhibit 3 because the *Morningstar* website contains boilerplate “Terms and Conditions” that *Morningstar* cannot “guarantee the accuracy” of its publications is beside the point. (Mot-8.) Defendants do not cite Exhibit 3 for the truth of its contents, unlike the cases involving *Morningstar* publications to which Plaintiff cites. (Mot-8); see *Lynn M. Kennis v. First Eagle Inv. Mgmt., LLC*, 2015 WL 5886178, at \*5 (D. Del. Oct. 8, 2015) (defendants rely on *Morningstar* documents for the truth of its contents to support “its argument regarding the distinctions between” two funds), *report and recommendation adopted*, 2015 WL 8489956 (D. Del. Dec. 9, 2015); *Evans v. Associated Banc-Corp*, 2022 WL 4638092, at \*5 (E.D. Wis. Sept. 30, 2022) (declining judicial notice of fact sheets published by *Morningstar* in ERISA claim due to “dispute over the accuracy of information included in the fact sheets”).

## **2. Defendants’ Public Filings With the SEC Are Judicially Noticeable.**

Plaintiff also challenges Exhibits 21-24, which are public SEC filings made by Defendants in 2023. These Exhibits may be considered because they form an integral part of the “total mix of information [already] made available” during the relevant period. *In re Proshares Tr. II Sec. Litig.*, 2020 WL 71007, at \*7 (S.D.N.Y. Jan. 3, 2020) (Cote, J.), *aff’d*, 839 F. App’x 649 (2d Cir. 2021). It is blackletter law that “this Court may consider [SEC filings] to determine what has been disclosed.” *In re Weight Watchers Int’l Inc. Sec. Litig.*, 504 F. Supp. 3d 224, 258 (S.D.N.Y. 2020).

Plaintiff criticizes Defendants for not directly citing these Exhibits in their motion to dismiss (Mot-13), but in Defendants’ motion to dismiss they are referenced collectively as “the Funds’ 2022 and 2023 Reports” that contain public disclosures regarding defaults. (MTD Br.-26.)

Courts routinely take judicial notice of “public disclosure documents that must be filed with the [SEC]” and documents that “bear on the adequacy of SEC disclosures,” even if they were “not cited to or relied on in the Amended Complaint.” *Pehlivanian v. China Gerui Advanced Materials Grp., Ltd.*, 153 F. Supp. 3d 628, 643 (S.D.N.Y. 2015). *See also Nw. Biotherapeutics, Inc. v. Canaccord Genuity LLC*, 2023 WL 9102400, at \*8 (S.D.N.Y. Dec. 29, 2023) (“when ruling on a motion to dismiss in a federal securities action, courts often take judicial notice of the contents of relevant public disclosure documents filed with the [SEC]”), *report and recommendation adopted*, 2024 WL 620648 (S.D.N.Y. Feb. 14, 2024); *Citadel Equity Fund Ltd. v. Aquila, Inc.*, 168 F. App’x 474, 476 (2d Cir. 2006) (“judicial notice of a public filing was properly within the court’s discretion on a motion to dismiss”); *JS Barkats PLLC v. Blue Sphere Corp.*, 2017 WL 2930935, at \*4 n.5 (S.D.N.Y. July 10, 2017) (SEC filings are “proper subjects of judicial notice”).

**3. Publicly Available Municipal Securities Rulemaking Board Documents Are Judicially Noticeable.**

The Court may also properly consider Exhibits 36-40, public records consisting of (i) annual reports published by the MSRB; (ii) a default notice issued by UMB Bank and published on the Electronic Municipal Market Access (“EMMA”) system, an MSRB-operated repository for public disclosures related to municipal securities; and (iii) a limited offering memorandum filed by the City of Falmouth, Kentucky and published on EMMA.

The Court may take judicial notice of Exhibits 36-38, annual reports published by MSRB. Courts in this Circuit have long recognized that they “may take judicial notice of public documents, including those from administrative agencies.” *Fair Hous. Just. Ctr. Inc. v. Lighthouse Living LLC*, 2021 WL 4267695, at \*4 (S.D.N.Y. Sept. 20, 2021). *See also Elite Union Installations, LLC v. Nat’l Fire Ins. Co.*, 559 F. Supp. 3d 211, 218 (S.D.N.Y. 2021) (“Courts may also ‘take judicial notice of’ ‘published reports, [and] records of administrative agencies.’”). The MSRB is a “self-regulatory organization” (SAC ¶108 n.5) authorized by Congress to “propose and

adopt rules to effectuate [securities regulation] with respect to transactions in municipal securities” 15 U.S.C. §78o-4. As such, the MSRB reports are akin to those published by any other administrative agency, and merely provide the uncontroversial context that typical municipal bonds with higher credit ratings offered lower yields than the riskier securities in which Plaintiff chose to invest. (MTD Br.-1); *see also Karabas v. TC Heartland LLC*, 770 F. Supp. 3d 454, 464 (E.D.N.Y. 2025) (“The Court takes judicial notice of [agency] publications”).

Plaintiff quibbles that Defendants’ comparison of the Fund’s yield to “typical municipal bond yields” is “disputable,” and, therefore, the MSRB reports “do not contain adjudicative facts.” (Mot-16.) But Plaintiff is conflating Defendants’ assertions with whether the materials themselves are judicially noticeable. Plaintiff does not allege that the information contained in the MSRB report is not “generally known within the trial court’s territorial jurisdiction” or cannot “be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Nor does Plaintiff argue that the information published by the MSRB is inaccurate. To the contrary, Plaintiff’s own Complaint directs the Court to the MSRB—“the self-regulatory organization charged by Congress with promoting a fair and efficient municipal securities market”—and EMMA—“the official source for municipal securities data and disclosure documents”—for information related to municipal bonds, and thus concedes the public availability and reliability of these materials. (SAC ¶108, n.5.)

The Court may also consider Exhibit 39, the publication on EMMA of a default notice from UMB Bank. *See Mallett v. Town of Huntington*, 799 F. Supp. 3d 117, 122 (E.D.N.Y. 2025) (“[C]ourts... [have] routinely take[n] judicial notice of’... ‘documents retrieved from official government websites’”) (citations omitted). In addition to the Complaint itself referencing EMMA, it is no different than taking notice of a document filed on the SEC’s EDGAR system. *Executive Park Partners LLC v. Benicci Inc.*, 2023 WL 3739093, at \*7 n.3 (S.D.N.Y. May 31,

2023) (“The Court can and does take judicial notice” of information “based on [defendant’s] most recent Form 8-K filed with the [SEC]” on EDGAR); *Barbara v. MarineMax, Inc.*, 2012 WL 6025604, at \*4 (E.D.N.Y. Dec. 4, 2012) (“I take judicial notice of MarineMax’s public filings with the SEC, available online in the EDGAR database”). In the end, Plaintiff’s arguments about how Exhibit 39 fits into the information available to investors boil down to merits arguments, which Defendants address in their motion to dismiss reply brief.

The limited offering memorandum that Defendants submitted as Exhibit 40 also may be considered. Exhibit 40 shows the interconnectedness of the Jefferson Enterprise entities, a fact which Plaintiff claims was hidden. Plaintiff concedes Exhibit 40 is publicly available on EMMA. (SAC ¶108 n.5.) In fact, Plaintiff himself relied on the offering memorandum in the First Amended Complaint (“FAC”) and only strategically removed it from his pleading after seeing Defendants’ prior motion to dismiss. (FAC ¶133 (ECF No. 74).)

In any event, Defendants offer Exhibit 40 for the fact of its publication, not for the truth of its contents. In other words, the disclosures in Exhibit 40 about how the Jefferson Enterprise entities are connected was “information within the public domain.” *Bank of Am.*, 980 F. Supp. 2d at 570 (“[J]udicial notice can be taken... [for] information... in the public domain during periods relevant to the plaintiffs’ claims.”). This Court may consider information in the public domain when determining whether an alleged misstatement is material. *See Garber*, 347 F. App’x at 668-69 (taking judicial notice of “SEC filings [and] newspaper articles” “not mentioned on the face of the complaint” as “information already in the public domain” when deciding whether there has been a material misrepresentation or omission). *See also ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 204 (2d Cir. 2009) (“[A]n alleged misrepresentation . . . could be immaterial as a matter of law.”); *Halperin v. eBanker USA.com, Inc.*, 295 F.3d 352, 357 (2d Cir. 2002) (“Certain alleged misrepresentations in a stock offering are

immaterial as a matter of law because it cannot be said that any reasonable investor could consider them important in light of adequate cautionary language set out in the same offering.”). Moreover, on a motion to dismiss, the Court may “disregard ‘allegations in a complaint that contradict or are inconsistent with judicially-noticed facts.’” *Exch. Listing, LLC v. Inspira Techs., Ltd.*, 661 F. Supp. 3d 134, 153 (S.D.N.Y. 2023).

#### **4. The Funds’ Public Securities Prices Are Judicially Noticeable.**

Plaintiff seeks to strike Exhibit 41, which contains the historical prices for each class of the Funds’ shares from December 20, 2023 to January 5, 2024.<sup>7</sup> These securities prices were obtained from Yahoo! Finance. (Rein Decl. ¶6.) Historical public securities prices are frequently treated as judicially noticeable materials under Rule 201 because they are generally known and can be easily verified through public sources. *See Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 166 n.8 (2d Cir. 2000) (“[T]he district court may take judicial notice of well-publicized stock prices[.]”). Yahoo! Finance, moreover, has been frequently referenced by this Court. *See Glantz v. James River Grp. Holdings, Ltd.*, 2025 WL 278440, at \*5 (S.D.N.Y. Jan. 23, 2025) (taking judicial notice of “historical stock prices from Yahoo Finance”); *In re Moody’s Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 512 n.5 (S.D.N.Y. 2009) (“The Court takes judicial notice of the stock prices... taken from the historical data listed at <http://finance.yahoo.com/q/hp?s=MCO>”), *opinion corrected on other grounds*, 612 F. Supp. 2d 397 (S.D.N.Y. 2009).

Plaintiff’s *ipse dixit* assertion that share prices cannot be judicially noticed outside of Section 10(b) cases under the Securities Exchange Act of 1934 (Mot-12) is unfounded. In *Amorosa v. Ernst & Young LLP*, for example, this Court dismissed a Section 11 claim based on the pleadings and “facts that can be judicially noticed,” including “the stock prices on the relevant

<sup>7</sup> The “Funds” are the Principal Street Fund and Easterly RocMuni High Income Municipal Bond Fund (“Easterly Fund”).

dates.” 682 F. Supp. 2d 351, 371 (S.D.N.Y. 2010). Plaintiff identifies no case imposing this purported limitation.

Plaintiff’s other arguments boil down to arguments about what inferences to draw from the share price data, not any dispute as to its accuracy. (Mot-12-13.) Any such arguments should instead have been raised in opposition to Defendants’ motion to dismiss. *See In re Frito-Lay N. Am., Inc. All Nat. Litig.*, 2013 WL 4647512, at \*4 (E.D.N.Y. Aug. 29, 2013) (rejecting plaintiffs’ opposition to judicial notice where “[P]laintiffs’ arguments respond... [to] whether the Court should draw from them the inferences and conclusions that defendants suggest in their motion to dismiss”).

#### **5. Public News Reports Are Judicially Noticeable.**

Exhibits 31-35, comprising third-party commentary and news reports available on public websites, are judicially noticeable. Specifically, these Exhibits consist of (i) articles regarding the heightened risks in the municipal bond market published by *Bloomberg* and *Barron’s* in April 2025; and (ii) news coverage of the challenging financial situation faced by the obligor of three of the bonds held by the Funds. Defendants submitted each to show the fact of their publication, not the truth of their contents.

It is well established that the Court may take judicial notice of third-party publications for the “purpose of noting what the documents state.” *Hesse v. Godiva Chocolatier, Inc.*, 463 F. Supp. 3d 453, 462 (S.D.N.Y. 2020); *see also In re Zyprexa Prods. Liab. Litig.*, 549 F. Supp. 2d 496, 501 (E.D.N.Y. 2008) (“Judicial notice can be taken of... news articles and published analyst reports in determining what the market knew.”). Defendants did exactly that to show “what information existed in the public domain during periods relevant to the plaintiffs’ claims.” *Bank of Am.*, 980 F. Supp. 2d at 570. Contrary to Plaintiff’s assertions (Mot-10, 14, 15), *none* of Defendants’ motion to dismiss arguments rely on the truth of the contents of these materials.

Plaintiff's objection to Exhibits 31-32 is meritless. Plaintiff, citing one trademark infringement case involving private W-2 forms proffered for the truth of their contents, asks the Court to strike the Exhibits because of arguments that Plaintiff conjectures Defendants *might* make in the future. (Mot-14 (citing *Great Mill Rock LLC v. Stellex Cap. Mgmt. LP*, 2020 WL 5370626, at \*2 n.1 (S.D.N.Y. Sept. 4, 2020).) Plaintiff hypothesizes that Defendants might "seek to improperly introduce them" to show what "caused the Fund to collapse in June 2025." (Mot-14.) But Defendants have done no such thing and have made no arguments for dismissal based on the causes of the Funds' NAV decline in June 2025.

As to Exhibits 33-35, these are judicially noticeable "news articles" that merely demonstrate that "information was publicly available." *Finn v. Barney*, 471 Fed. App'x 30, 32 (2d Cir. 2012). The documents are properly submitted for the "fact of their publication," *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 2004 WL 305809, at \*4 n. 3 (S.D.N.Y. Feb. 18, 2004), which shows that information about the liquidity of assets underlying the Funds, including the assets of obligors Legacy Cares, Proton Bonds and PureCycle that Plaintiff relies on in the Complaint, was available to investors. (*See* SAC ¶12; MTD Br.-20.)

**B. The Court May Consider Defendants' Summary Exhibits.**

Exhibits 1 and 2 (together, "Summary Charts") are summaries prepared for the Court's convenience that are routinely considered by courts.

For each of the twelve challenged statements, to assist the Court, Exhibit 1 lists the Complaint paragraph where the statement is referenced, each Principal Street Fund or Easterly Fund filing (Exhibits 4 to 26) during the July 29, 2022 through June 12, 2025 putative class period containing the statement, and cross-references to the applicable grounds for dismissal in Defendants' motion to dismiss. Exhibit 2 provides excerpted quotes from the disclosures concerning "illiquidity, valuation, investments in defaulted securities, and investments in similar

or related businesses” made by the Funds in Exhibits 4 to 26, citing to the relevant page numbers in those Exhibits. (Ex. 2 at 1.) Plaintiff concedes that the Court may consider Exhibits 4 to 20, and 25-26. (Campisi Decl. ¶16.)

There should be no serious question that the Court can consider these Summary Charts. On motions to dismiss securities claims, courts regularly consider exhibits like Exhibit 1 that organize the alleged misstatements for the court. *See In re Garrett Motion Inc. Sec. Litig.*, 2023 WL 2744029, at \*4 n.5 (S.D.N.Y. Mar. 31, 2023) (incorporating into its own opinion defendants’ “Chart of Alleged Misstatements”), *aff’d sub nom, Gabelli Asset Fund v. Garrett Motion Inc.*, 2024 WL 1653451 (2d Cir. Apr. 17, 2024); *Sun v. TAL Educ. Grp.*, 2023 WL 6394413, at \*8 n.15 (S.D.N.Y. Sept. 29, 2023) (expressly citing and discussing defendants’ “Chart of Alleged Misstatements”).

None of Plaintiff’s arguments for striking Exhibit 1 has merit. Exhibit 1 does not, as Plaintiff claims “exten[d]... Defendants’ arguments in their brief.” (Mot-21.) Exhibit 1 simply provides a cross-reference between each challenged statement and the locations of applicable arguments in Defendants’ motion to dismiss. Given the sheer number of challenged statements, claims, parties, and dismissal arguments, this is a convenience for the Court and does not contain any additional argument.<sup>8</sup> Notably, Plaintiff identifies no argument referenced in Exhibit 1 that is

---

<sup>8</sup> *See In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 65 (S.D.N.Y. 2009) (denying motion to strike when appendix contained “brief summaries of the excerpted testimony,” and “nothing in [it]... rises to the level of legal argument,” so it did not “constitute an impermissible continuation” of the filing); *Pitman v. Immunovant, Inc.*, 2024 WL 964258, at \*1 n.3 (E.D.N.Y. Feb. 25, 2024) (“Plaintiff contends that the chart contains 43 new arguments and is therefore ‘an inappropriate way to exceed the page limits... The Court disagrees... [because] the document is provided for the Court’s convenience to assess the text of the statements at issue[.]’”), *report and recommendation adopted*, 2024 WL 1342737 (E.D.N.Y. Mar. 29, 2024); *see also In re PTC Therapeutics, Inc. Sec. Litig.*, 2017 WL 3705801, at \*3 n.5 (D.N.J. Aug. 28, 2017) (rejecting argument that Defendants “effectively augmented the size of their opposition brief by attaching the [summary] chart as an exhibit” because “[t]he chart does nothing more than organize portions of the AC (reprinted verbatim) and refer to arguments already raised in the papers”); *Garden City Emps.’ Ret. Sys. v. Anixter Int’l, Inc.*, 2011 WL 1303387, at \*9 (N.D. Ill. Mar. 31, 2011) (denying motion to strike

not in Defendants' motion to dismiss brief. Nor is Exhibit 1 comparable to the cases cited by Plaintiff, which, unlike here, each involved additional arguments.<sup>9</sup> (*See* Mot-21.)

Plaintiff's arguments for striking Exhibit 2 are similarly groundless. Exhibit 2 is a summary of the voluminous SEC filings, submitted as Exhibits 4 to 26, that underpin Plaintiff's claims.<sup>10</sup> Plaintiff does not object to the Court's consideration of Exhibits 4 to 20, 25 and 26 (Campisi Decl. at ¶16), each of which is referenced in the Second Amended Complaint and, as explained in Section II.A. above, Exhibits 21-24 also may properly be considered. Exhibit 2 merely excerpts language from those Exhibits. Courts routinely permit such exhibits on motions to dismiss, especially when, as here, considering voluminous materials referenced in the complaint. *See Micholle v. Ophthotech Corp.*, 2019 WL 4464802, at \*16 n.19 (S.D.N.Y. Sept. 17, 2019) (declining to strike charts summarizing SEC filings because they were "compilations of voluminous data 'that cannot be conveniently examined in court'"); *In re Bear Stearns Cos. Sec., Deriv. & ERISA Litig.*, 763 F. Supp. 2d 423, 583 (S.D.N.Y. 2011) (considering on motion to

---

filed by plaintiffs who sought to strike a chart summarizing "each of the statements that Plaintiffs consider misleading with a reference to the relevant portion of [defendant's] motion to dismiss" and "a short description of why the statement is inactionable").

<sup>9</sup> *See In re Acadia Pharms. Inc. Sec. Litig.*, 2020 WL 2838686, at \*4 n.2 (S.D. Cal. June 1, 2020) (exhibit identified statements not addressed in motion to dismiss); *In re Paine Webber Sec. Litig.*, 1992 WL 725359, at \*1 n.2 (S.D.N.Y. Sept. 18, 1992) (exhibit included "four page[s] listing of case law citations"); *Melito v. Am. Eagle Outfitters, Inc.*, 2017 WL 6541535, at \*1 (S.D.N.Y. June 9, 2017) ("disregard[ing]" supplemental attachments to letter comprised of "hundreds of pages of declarations"); *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 71 (E.D.N.Y. 2004) (disregarding "legal arguments set forth in [an attorney's] affidavit").

<sup>10</sup> The Court may consider the Summary Charts under Federal Rule of Evidence 1006 because they are submissions of "voluminous data" "in the form of a chart, summary, or calculation." *Malin v. XL Cap. Ltd.*, 499 F. Supp. 2d 117, 134 (D. Conn. 2007) (citing Fed. R. Evid. 1006 and considering summary charts on motion to dismiss).

dismiss charts and tables summarizing SEC filings and stock prices as “compilations of voluminous data”).<sup>11</sup>

Nor is Exhibit 2 “inaccurate, confusing and misleading.” (Mot-21-22.) Exhibit 2 quotes verbatim documents referenced in the Second Amended Complaint or subject to judicial notice, which are also submitted for consideration in full. *Michelle*, 2019 WL 4464802, at \*16 n.19 (chart summarizing SEC filings is “particularly appropriate” because Defendants “have also submitted the ‘underlying documents... for consideration’”).<sup>12</sup> Plaintiff, notably, does not challenge that the SEC filings contain the quoted statements, that the Exhibit accurately quotes the filings, or that any statement is incomplete or quoted out of context. *Malin*, 499 F. Supp. 2d at 134 (refusing to strike “summaries of information put together by Defendants” where “Plaintiff argues that the summaries are misleading, but do not contend that they are inaccurate”).

Exhibit 2 is intended to aid the Court with its task under Second Circuit law in which “[t]he touchstone of the inquiry is not whether isolated statements within a document were

---

<sup>11</sup> See also *Industriens Pensionsforsikring v. Becton, Dickinson & Co.*, 2021 WL 2850417, at \*1-2 (D.N.J. July 8, 2021) (declining to strike appendix “reasonably designed to assist in the Court’s examination of the alleged misstatements” by identifying alleged misstatements, sources of statements, and relevant cautionary language); *Mich. Carpenters’ Pension Fund v. Rayonier Advanced Materials, Inc.*, 2019 WL 1429667, at \*3 (M.D. Fla. Mar. 29, 2019) (denying motion to strike charts summarizing risk disclosures because charts were “both helpful and permissible” and “a means of establishing the cautionary statements contained in voluminous documents to which Plaintiffs cite in the Amended Complaint”); *In re Sec. Litig. BMC Software, Inc.*, 183 F. Supp. 2d 860, 884 (S.D. Tex. 2001) (considering chart summarizing SEC filings that was “included only for the court’s convenience as a summary of information included in SEC filings attached to the memorandum”).

<sup>12</sup> Although Defendants provided a selection of excerpts of those reports for the Court’s convenience, the Court can consider the reports in full by referring to the underlying documents. But courts routinely consider excerpts of similar documents. *E.g.*, *Falberg v. Goldman Sachs Grp., Inc.*, 2020 WL 3893285, at \*5 (S.D.N.Y. July 9, 2012) (“The Court takes judicial notice of the excerpts of SEC and DOL filings attached to... declarations.”); *In re Hub Cyber Sec. Ltd.*, 2025 WL 872078, \*4 n.2 (S.D.N.Y. Mar. 20, 2025) (taking judicial notice of “three exhibits that were filed with the SEC: an excerpt of the registration statement, an excerpt of the proxy statement, and an investor presentation from April 4, 2022”).

true, but whether defendants' representations or omissions, considered together and in context, would affect the total mix of information and thereby mislead a reasonable investor regarding the nature of the securities offered." *Halperin*, 295 F.3d at 357. Plaintiff faults Defendants for failing to include in Exhibit 2 the "impact on the claims alleged" or to "connect" the disclosures to the claims. (Mot-22.) But Defendants properly limited their arguments to their motion to dismiss brief, not its Exhibits.

### **III. Rule 12(d) Conversion Is Unwarranted.**

Rule 12(d) conversion is only required when the court, on motions to dismiss, relies on "matters outside the pleadings." *Armand v. Osborne*, 2014 WL 723381, at \*3 (E.D.N.Y. Feb. 24, 2014). Judicially noticed materials "are not considered matters outside the pleadings" and therefore do not trigger conversion. *Staeher*, 547 F.3d at 426 ("matters judicially noticed by the District Court are not considered matters outside the pleadings"); *Wells Fargo Bank, N.A.*, 127 F. Supp. 3d at 166 ("[Th]e Court may take judicial notice of certain matters of public record without converting the motion into summary judgment.").

As detailed above, consideration of the challenged Exhibits for the limited purpose for which Defendant cites to them in the motion to dismiss is proper. Accordingly, the Court's consideration of these Exhibits does not warrant converting Defendants' motion to dismiss into one for summary judgment. *See Lee v. Delta Air Lines, Inc.*, 2023 WL 3592153, at \*6 (S.D.N.Y. Apr. 26, 2023) (plaintiff's arguments for conversion "fails because it overlooks what the Court may properly consider on a motion to dismiss").

Plaintiff's argument that the challenged Exhibits raise "factual disputes" regarding whether "Plaintiff was on notice" also is baseless. (Mot-19.) Setting aside that this merely rehashes Plaintiff's Opposition brief, the Second Circuit has held "courts can [] resolve the issue of inquiry notice as a matter of law on a motion to dismiss" and that "it is proper to take judicial

notice of... press coverage... or regulatory filings... in deciding whether [such materials] were adequate to trigger inquiry notice.” *Staehr*, 547 F.3d at 412, 425 (internal quotation marks omitted). Further, the information publicly available to investors, which the Court may consider as part of deciding whether Plaintiff has alleged a material misstatement, is equally available to all parties and does not require any discovery. (Mot-20.)

Accordingly, the Court should deny Plaintiff’s request for conversion. *See Levy v. Verizon Info. Servs., Inc.*, 498 F. Supp. 2d 586, 595 n.8 (E.D.N.Y. 2007) (declining Rule 12(d) conversion “where plaintiffs were unable to articulate any factual disputes which would prevent adjudication of the legal issues present at this juncture”).

#### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff’s Motion to Strike and Plaintiff’s alternative request to convert Defendants’ motion to dismiss into a motion for summary judgment.

/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, 42<sup>nd</sup> 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) and Your Honor's Individual Rules because it contains 6,985 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