IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MARIANNA DANDINI AND JEFFREY LOGAN, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. FIRST EAGLE FUNDS, FIRST EAGLE INVESTMENT MANAGEMENT LLC, AND FEF DISTRIBUTORS, LLC, Defendants.	)	C.A. No. N25C-05-224 KMM (CCLD)

Date Submitted: April 27, 2026
Date Decided: July 9, 2026

Upon Defendants' Motion to Dismiss - **GRANTED**

MEMORANDUM OPINION AND ORDER

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Miller, J

I. *Introduction*

Plaintiffs, stockholders in a mutual fund, filed this putative class action alleging the defendants violated federal securities laws by making misleading disclosures (and failing to make requisite disclosures) relating to several mutual funds' accounting practices. Plaintiffs acknowledge that the method used by the funds is an accepted accounting practice in the mutual fund industry.

Specifically, plaintiffs challenge the mutual funds' disclosure of their practice to treat distributions to the mutual fund (income and capital gains) as an asset instead of a liability. This practice, plaintiffs assert, artificially inflates the net asset value of the mutual fund's stock, thereby harming stockholders by inflating the per share price, fees, and taxes, in addition to other harms.

Defendants moved to dismiss on a host of grounds. As discussed below, the Amended Complaint fails to allege that the disclosures were misleading or that the defendants failed to make disclosures required by securities laws. Accordingly, the motion to dismiss is GRANTED.

II. *Factual Background*

A. *First Eagle Entities*

Defendant First Eagle Funds ("First Eagle") is a registered investment management company that issues shares in, relevant here, nine equity funds: First Eagle Global Fund, First Eagle Gold Fund, Eagle Global Income Builder Fund, First

Eagle Global Real Assets Fund, First Eagle Overseas Fund, First Eagle Rising Dividend Fund, First Eagle Small Cap Opportunity Fund, First Eagle U.S. Smid Cap Opportunity Fund, and First Eagle U.S. Value Fund (collectively, the "Funds").[1] First Eagle sells shares to the public "on a continuous rolling basis" pursuant to a Securities and Exchange Commission ("SEC") Form N-1A, which contains the Prospectus.[2]

Defendant First Eagle Investment Management ("Management") is First Eagle's advisor and markets and sells shares of the Funds through an online website.[3]

Defendant FEF Distributors LLC ("Distributors" and with First Eagle and Management, "Defendants") is the principal underwriter of the Funds' shares.[4]

The Funds are not defendants in this action.

B. *Plaintiffs*

Plaintiff Marianna Dandini purchased shares of First Eagle Global Fund "on multiple occasions."[5]

Plaintiff Jeffrey Logan purchased shares of First Eagle Global Fund.[6]

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[1] Amended Complaint (Am. Compl.") ¶¶ 17, 38-39 (D.I. 27).
[2] *Id.* ¶ 40. Mutual funds must register with the SEC using Form N-1A. It "prescribes the required contents of a funds' prospectus." *Ulferts v. Franklin Resources, Inc.*, 554 F. Supp.2d 568, 575-76 (D.N.J. 2008).
[3] *Id.* ¶ 18.
[4] *Id.* ¶ 19.
[5] *Id.* ¶ 15.
[6] *Id.* ¶ 16.

C. *Mutual Funds' Accounting Practices*

Stocks and bonds held by mutual funds "gain or lose value as they are traded on the financial markets, and some distribute dividends, interest, and capital gains."[7] These distributions result in income to the mutual funds. Because mutual funds are passthrough entities, they must distribute substantially all earnings to investors, who are then taxed on the distributions.[8]

There are two (at least) accounting approaches utilized in the mutual fund industry for the treatment of this income: (1) recognizing and distributing accrued income daily, and (2) treating accrued income as an asset, which is later distributed.[9]

Investors purchase shares based on a fund's net asset value ("NAV"), which is determined by the value of the fund's assets, less its liabilities, divided by the total number of issued shares.[10] Under the first accounting approach, the income is treated as a liability when received by the mutual fund and therefore, the NAV and resulting share value, is lower. Under the second approach, the NAV is higher (due

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[7] *Id.* ¶ 3.
[8] *Id.* ¶¶ 5, 41-42.
[9] *Id.* ¶ 43.
[10] *Id.* ¶¶ 3, 11. *See also In re Salomon Smith Barney Mut. Fund Fee Litig.*, 441 F. Supp.2d 579, 590 n.9 (S.D.N.Y. 2006) (quoting *In re Morgan Stanley & Van Kampen Mut. Fund Sec. Litig.*, 2006 WL 1008138, at *9 (S.D.N.Y. Apr. 18, 2006)) ("Unlike an ordinary share of stock traded on the open market, the value of a mutual fund share is calculated according to a statutory formula. Share price is a function of 'Net Asset Value[,]' the pro-rata share of assets under management, minus liabilities such as fees.").

to the income being treated as an asset) until a distribution is recognized, at which time, the NAV declines.

D. *First Eagle's Disclosures*

First Eagle's prospectus disclosed that it calculates NAV "by dividing the total current value of the assets of a Fund, less its liabilities, by the total number of shares outstanding at the time of such computation."[11] First Eagle further disclosed that when distributions are made, "on the ex-dividend date of such a payment, the net asset value of a Fund will be reduced by the amount of the payment."[12] First Eagle informed investors that NAV includes appreciation (*i.e.*, earnings) in the Funds:

> Since, at the time of an investor's purchase of a Fund's shares, a portion of the per share net asset value by which the purchase price is determined may be represented by realized or unrealized appreciation in the Fund's portfolio or undistributed income of the Fund, subsequent distributions (or a portion thereof) on such shares may economically represent a return of capital. However, such a subsequent distribution may be taxable to such investor even if the net asset value of the investor's shares is, as a result of the distributions, reduced below the investor's cost for such shares. Prior to purchasing shares of the Fund, an investor should carefully consider such tax liability which may be incurred by reason of any subsequent distributions of net investment income and capital gains.[13]

First Eagle disclosed the tax consequence of the Funds' income and capital gains: "Unless you are investing through a tax-deferred account … in general, you

[11] Defendants' Opening Brief ("OB"), Ex. 1 at 195 (D.I. 31, 32) (Prospectus).
[12] *Id*. at 219; Am. Compl. ¶ 64.
[13] OB, Ex. 1 at 365 (Registration Statement).

will be taxed on the ordinary income dividends and capital gains distributions you receive from a Fund[.]"[14] It further disclosed that "Dividends paid out of a Fund's investment company taxable income generally will be taxable to a U.S. shareholder as ordinary income[.]"[15]

First Eagle also disclosed that "[a]ccured interest and dividends receivable" are "Assets"[16] and that its management fees are calculated on the Fund's "average daily value of its net assets."[17]

III. *Plaintiffs' Claims*

While acknowledging that both accounting methods are well-recognized in the mutual fund industry, plaintiffs assert that "Defendants readily could have utilized the first accounting approach" which treats income as liabilities.[18] Plaintiffs allege that this method does not artificially inflate the NAV. Instead, "Defendants account for dividends received and capital gains realized as assets of the Funds by allowing them to accrue to (and increase) the NAV on a daily basis."[19]

Plaintiffs complain that under Defendants' chosen accounting method, when a stockholder buys shares in a Fund "after it has accrued dividends or realized gains to its NAV," the purchase includes: "(1) an interest in the Fund's underlying assets

[14] *Id.*, Ex. 1 at 219 (Prospectus).
[15] *Id.* at 357 (Prospectus).
[16] *Id.*, Ex. 3 at 257 (Shareholder Report).
[17] Am. Compl. ¶ 11.
[18] *Id.* ¶ 44.
[19] *Id.* ¶ 45.

(the nondistributable assets like stocks or bonds); and (2) the right to a proportionate share of a future distribution of income (*i.e.*, the dividends and realized capital gains) at the time it is declared."[20] This results in the investor effectively paying for "(1) the value of the underlying assets of the fund; and (2) the value of the proportionate share of the undistributed income at the time of purchase that is built into the per share NAV."[21]

Plaintiffs' claims rest on First Eagle's alleged failure to disclose "known material risk[s] and [the] resulting impact," including an inflated NAV-based share price.[22] The Funds classifying income as an asset is improper, plaintiffs allege, because all income and capital gains must be distributed to the stockholders within the tax year and therefore, the income and gains should be treated as liabilities.[23] By failing to do so, the NAV of the Funds is artificially inflated, causing purchasers to overpay, resulting in increased taxes and management fees (which are based on the Fund's NAV), and causing stockholders to be diluted and receiving "less shares than [stockholders] would have otherwise received (and forfeit the opportunity to acquire additional shares)[.]"[24]

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[20] *Id.* ¶ 45.
[21] *Id.* ¶ 46.
[22] *Id.* ¶ 6.
[23] *Id.* ¶ 5 (this approach "misclassifies realized income as an 'asset'").
[24] *Id.* ¶¶ 13, 49-52.

Plaintiffs assert that First Eagle's[25] disclosures violate Sections 11 (Count I) and 12(a)(2) (Count II)[26] of the Securities Act of 1933 (the "1933 Act") because the "Registration Statements were inaccurate and misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein."[27]

Plaintiffs asserts that First Eagle's duty to disclose the alleged omitted information arises from Form N-1A, which requires First Eagle to disclose "principle risks of investing[,]" including risks "reasonably likely to affect adversely the Fund's net asset value[.]"[28] First Eagle is also required to disclose "the procedures for pricing the Fund's shares," the "policy with respect to dividends and distributions," "the tax consequences to shareholders of buying, holding, exchanging[,] and selling the Fund's shares,"[29] and the method for "determining the total offering price . . . and the method(s) used to value the Fund's assets."[30]

Plaintiffs assert that Form N-1A:

> imposed an affirmative obligation on Defendants to disclose its chosen accounting practice for treating dividend and capital gain income, the way the Funds included income as fund 'assets' for NAV calculation

[25] Plaintiffs assert the same arguments against Distributors. For ease of reference, the Court refers to the disclosures as First Eagle's but they apply to both.
[26] Counts I and II are asserted against First Eagle and Distributors.
[27] Am. Compl. ¶ 150.
[28] *Id.* ¶ 58 (citing Form N-1A, item 9(c)).
[29] *Id.* ¶¶ 59-62 (citing Form N-1A, items 11(a), (d), (f), and (g)).
[30] *Id.* ¶ 63 (citing Form N-1A, item 23).

> without the offsetting liability, the inflationary impact this practice has on NAV shares prices, the impact it has on yield and fees, and the risk or loss incurred by an investor from investing in a fund with high income levels.[31]

The final claim (Count III) is against Management for alleged violation of Section 15 of the 1933 Act, asserting that it is a Control Person of the issuer and therefore, it is strictly liable for the violations alleged in the two previous Counts.[32]

Plaintiffs filed this putative class action with a proposed class to consist of investors who, from May 20, 2022 through the present, purchased any shares of the Funds.[33]

IV. *Procedural History*

Plaintiffs initially filed an action against Defendants in New York state court, which was dismissed due to a forum selection clause. An action was then filed in this court on May 20, 2025.[34] After Defendants moved to dismiss and filed their opening brief,[35] plaintiffs filed the Amended Complaint.

Defendants again moved to dismiss. In response, plaintiffs filed a brief in opposition. After supplemental submissions by the parties, the motion to dismiss is now fully briefed.[36]

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[31] *Id.* ¶ 64.
[32] *Id.* ¶ 173.
[33] *Id.* ¶ 1.
[34] D.I. 1.
[35] D.I. 13-14.
[36] D.I. 39, 40.

V. *Parties' Contentions*

Defendants argue that the income the Funds receive from investments is properly recorded as an asset and, as plaintiffs acknowledge, is a "well-recognized" accounting method in the mutual fund industry. Defendants contend that the Amended Complaint must be dismissed because governing federal securities laws prohibit misleading disclosures, but plaintiffs have identified none.

Defendants also argue that the Amended Complaint must be dismissed because (i) the claims are not pled with particularity as required by Rule 9(b), (ii) the claims are time-barred as they were filed more than one year after the Funds' disclosures, (iii) the claims fail to plead recoverable damages, and (iv) plaintiffs lack standing with respect to the eight Funds in which plaintiffs never invested. Because Count III is derivative of the prior Counts, which must be dismissed, this Count also fails.

Plaintiffs counter that they have adequately pled claims for violations of the 1933 Act and Defendants' assertion that they complied with SEC regulations and Generally Accepted Accounting Principles ("GAAP") does not absolve them from liability for misstatements and omissions in the disclosures. Plaintiffs further contend that their claims are timely. They have standing to assert violations occurring at all nine Funds because plaintiffs suffered injury from First Eagle's violations and pled recoverable damages, and the members of the class who

purchased shares in the other Funds have suffered injuries from the same disclosure violations. Plaintiffs argue that this issue relates to class certification and is not appropriately addressed on a motion to dismiss. Finally, because their other claims are sufficiently pled, Count III also is sufficiently pled.

VI. *Standard of Review*

Under Superior Court Civil Rule 12(b)(6), the court must "'deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances.'"[37] At the pleading stage, Delaware courts afford a liberal construction to the allegations in the complaint.[38] The court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in favor of the non-moving party.[39] The court, however, does not accept conclusory allegations that lack supporting factual allegations.[40]

On a motion to dismiss, the general rule is that the "universe of facts" is those that are pled in the complaint.[41] A court may consider outside matters without converting the motion to one for summary judgment "(i) where an extrinsic document is integral to a plaintiff's claim and is incorporated into the complaint by

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[37] *Delaware Human and Civil Rights Comm'n v. Welch*, 2025 WL 2222967, at *4 (Del. Super. Aug. 5, 2025) (quoting *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011)).
[38] *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2021 WL 117036, at *6 (Del. Super. Jan 13, 2021).
[39] *Id.* at *5.
[40] *Id.* at *6.
[41] *Doe 30's Mother v. Bradley*, 58 A.3d 429, 443 (Del. Super. 2012).

reference, and (ii) where the document is not being relied upon for the truth of its contents."[42] Generally, a document is integral if it is the source for the facts as pleaded in the complaint.[43]

VII. *Discussion*

A. *Does Rule 9(b)'s heightened pleading standard apply?*

Defendants argue that plaintiffs' claims sound in fraud, and therefore they must plead their claims with particularity.[44] Plaintiffs respond that they are not alleging fraud claims, but rather negligence claims.[45] Delaware is a notice-pleading jurisdiction and only a short and plain statement is required to adequately plead a claim.[46] However, Delaware's Rule 9(b) requires that claims based on fraud meet the heightened standard of pleading with particularity.

While the Amended Complaint contains allegations that could be construed as pleading fraud claims,[47] plaintiffs expressly state that they need not plead scienter or intent (which is required for fraud).[48] Construing the allegations in plaintiffs'

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[42] *Id*. at 444.
[43] *Murray v. Mason*, 244 A.3d 187, 192-93 (Del. Super. 2020); *Doe 30's Mother*, 58 A.3d at 443.
[44] OB at 9.
[45] Answering Brief ("AB") at 11 (D.I. 34).
[46] Super. Ct. Civ. R. 8(a).
[47] *See* Am. Compl. ¶ 8. (the documents contained disclosures "Defendants knew … were false and misleading"), *id.* ¶ 9 ("This disclosure is false, misleading, and designed to conceal the true nature of the accrued income and capital gains problem from investors"), *id.* ¶ 10. ("Defendants know, yet fail to disclose…"), *id.* ¶ 11 ("Defendants also falsely disclose…").
[48] *Id.* ¶ 150.

favor, which the Court must do at this stage, the Amended Complaint is not based on allegations of fraud.[49]

Finding that plaintiffs' claims are negligence based does not relieve them of the heightened pleadings standard. Delaware Rule 9(b), unlike its federal counterpart, requires claims of negligence to be pled with particularity.[50] Plaintiffs do not address Delaware's pleading standard in their Answering Brief.

Defendants argue, in the alternative, that plaintiffs' claims fail to meet the lower Rule 8 pleading standard. Because, as discussed below, plaintiffs' fail to state a claim under Rule 8 standards, the Court need not address the heightened pleading standard of Rule 9(b).

B. *Section 11 and Section 12 pleading standards*

To assert a claim under Section 11 of the 1933 Act, a plaintiff must allege "that a registration statement: (1) contained an untrue statement of material fact; (2)

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[49] To the extent that the Amended Complaint could be construed to plead allegations of fraud, plaintiffs have abandoned such claims by failing to address them in their Answering Brief. *Ultragenyx Pharm., Inc. v. Catalent Md., Inc.*, 2025 WL 4667818, at *9 (Del. Super. Dec. 16, 2025) ("[Plaintiff] failed to respond to this argument in its Answering Brief and thus any opposition is waived." (citation omitted)); *Ligos v. Tsuff*, 2022 WL 17347542, at *10 n.131 (Del. Ch. Nov. 30, 2022) ("Plaintiff failed to respond to ... Defendants' briefing on this issue and has thus waived the argument." (citation omitted)). *See also Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived." (citations omitted)).

[50] *Compare* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."), *with* Super. Ct. Civ. R. 9(b) ("In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity.").

omitted to state a material fact required to be stated therein; or (3) omitted to state a material fact 'necessary to make the statement therein not misleading.'"[51]

Under Section 12(a)(2), a person is liable when it "offers or sells a security ... by means of a prospectus or oral communication, which includes an untrue statement of a material fact…."[52] Neither Section 11 nor Section 12(a)(2) requires a showing of scienter.[53]

As noted, in addition to disclosures mandated by law, Sections 11 and 12 require disclosure of "any material facts that are necessary to make disclosed material statements, whether mandatory or voluntary, not misleading."[54] "Whether or not a statement is materially misleading is a fact-specific inquiry."[55] The inquiry is not limited to the specific statements, but rather, must consider "whether defendants' representations, taken together and in context, would have mislead a reasonable investor about the nature of the [securities]."[56]

Defendants argue that the practice of recording income as an asset does not violate SEC regulations or GAAP. Plaintiffs, however, argue that their claims do not rest on violations of SEC regulations or GAAP but rather, Defendants' failure to

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[51] *Salomon Smith Barney*, 441 F. Supp.2d at 587 (cleaned up; citation omitted).
[52] *Id.*
[53] *Id.*; *In re Morgan Stanley Information Fund Securities Litig.*, 592 F.3d 347, 359 (2d Cir. 2010).
[54] *Craftmatic Securities Litig. v. Kraftsow*, 890 F.2d 628, 641 (3d Cir. 1989).
[55] *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 986 F. Supp.2d 487, 515 (S.D.N.Y. 2013) (cleaned up; citation omitted).
[56] *Id.* (quoting *McMahan & Co. v. Wherehouse Entm't, Inc.*, 900 F.2d 576, 579 (2d Cir. 1990)); *Salomon Smith Barney*, 441 F. Supp.2d at 587 (cleaned up; citation omitted).

sufficiently disclose the chosen accounting method for the Funds.[57] Therefore, the Court will focus on these alleged disclosure violations and addresses each in turn.

C. *First Eagle's alleged disclosure violations*

1. *First Eagle's alleged failure to disclose its accounting practices.*

Plaintiffs allege that First Eagle failed to disclose that its accounting practices inflate the NAV. Defendants respond that First Eagle accurately disclosed how the NAV is calculated and that the NAV will be reduced on the ex-dividend date.

The Registration Statement disclosed to purchasers that "a portion of the per share net asset value by which the purchase price is determined may be represented by realized or unrealized appreciation in the Fund's portfolio or undistributed income of the Fund, subsequent distributions (or a portion thereof) on such shares may economically represent a return of capital."[58] Thus, First Eagle disclosed that income and capital gains received by a Fund are part of the purchase price.

Plaintiffs argue that First Eagle's disclosure is inadequate and misleading because it reflects that the NAV "***may***" include realized or unrealized appreciation

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[57] AB at 12-13.

[58] OB, Ex. 1 at 365 (Registration Statement). The Amended Complaint relies on First Eagle's disclosures (or lack thereof). Therefore, these public filings are incorporated into the Amended Complaint and the Court may consider them on this motion to dismiss. *See In re Santa Fe Pac. Corp. S'holder Litig*., 669 A.2d 59, 69 (Del. 1995) (a court may consider a proxy statement upon which a complaint's disclosure claim is based for the limited purpose of considering what was disclosed.).

or undistributed income when the NAV "invariably ***does***" include these components.[59]

An issuer may protect itself from liability by using cautionary language in its disclosures, but "'[c]autionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired.'"[60] "'[T]o warn that the untoward may occur when the event is contingent is prudent; to caution that it is only possible for the unfavorable events to happen when they have already occurred is deceit.'"[61] But there are limits as to what an issuer is required to disclose. "'It would be as serious an infringement of [SEC] regulations to overstate the definiteness of the [risks] as to understate them.'"[62]

Here, First Eagle's disclosure that the NAV "may" include income and capital gains cannot be misleading. The use of "may" reflects the reality, as plaintiffs acknowledge, that on the ex-dividend date after a distribution is made, the NAV does not include undistributed income.[63] Further, the receipt of income or capital gains from the Funds' investments is not static; that is, while it is alleged that the NAV "invariably does" contain these items, there are no allegations that the Funds have always (or will always) receive income or capital gains.

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[59] AB at 14-15 (emphasis in original).
[60] *Facebook, Inc.,* 986 F. Supp.2d at 515 (quoting *Wilson v. Merrill Lynch & Co., Inc.*, 671 F.3d 120, 130 (2d Cir. 2011)).
[61] *Id.* (citation omitted).
[62] *Id.* (quoting *Wilson*, 671 F.3d at 130) (citations omitted).
[63] Am. Compl. ¶¶ 10, 67.

Plaintiffs rely on *Industriens Pensionsforsikring A/S v. Becton, Dickerson & Co.*[64] for the proposition that use of "may" does not insulate Defendants from liability. This case, however, is distinguishable.

In *Industriens Pensionsforsikring*, the company disclosed certain risks relating to its infusion pump product, such as delay or prevention of sale of the product, fines, delays or suspension of regulatory clearances, or the imposition of penalties.[65] While the company disclosed these risks that "may" occur, it had been put on notice by the regulatory authority that it intended to put the company's application on hold, the company knew that obtaining the required clearances would take many months, and it faced imminent delays in production and sale of the product.[66] Because these risks had already transpired, describing them as contingencies was misleading.[67]

Unlike *Industriens Pensionsforsikring*, where the disclosure couched a risk that had already occurred as a hypothetical,[68] the Funds' disclosures reflect the reality of owning stock—the Funds may receive income and capital gains, but they may not. Failure to reflect this reality would overstate the definiteness of receiving

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[64] 620 F. Supp.3d 167 (D.N.J. 2022).
[65] *Id.* at 189-90.
[66] *Id.*
[67] *Id.*
[68] *See also, Facebook, Inc.*, 986 F. Supp.2d at 514-516 (company's disclosure that customers' increased use of mobile devices, which did not include advertisements at the time, "*may* negatively impact [the company's] revenue" was misleading because it knew "mobile usage and production decisions were harming Facebook's revenues.").

income.[69] First Eagle's disclosure that the NAV may include income and capital gains "discredit[s] the alleged misrepresentations to such an extent that the 'risk of real deception drops to nil.'"[70]

2. *First Eagle's alleged failure to adequately disclose income and capital gains being recorded as assets.*

Plaintiffs argue that First Eagle's disclosures were false and misleading because they do not reveal that the NAV "included the accrued dividends, short-term capital gains, and long-term capital gains as '*assets*,' yet failed to include associated offsetting '*liabilities*' for anticipated distributions of these assets to investors…."[71] First Eagle asserts that it did disclose that the accrued interest and dividend receivables are assets.

The Shareholder Report identifies accrued interest and dividends as "Assets."[72] Plaintiffs do not address this disclosure in their Answering Brief. Nor do plaintiffs point to any law requiring the income to be classified as a liability before their distribution to stockholders.[73] Indeed, they admit that the accounting method used by the Funds is a well-recognized method in the mutual fund industry.

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[69] *Id.*
[70] *Id.* at 516 (quoting *In re Bear Stearns Cos., Inc. Secs., Deriv. & ERISA Litig.,* 763 F. Supp.2d 423, 495 (S.D.N.Y. 2011)).
[71] AB at 7 (emphasis in original).
[72] OB, Ex. 3 at 257 (Shareholder Report).
[73] In the Amended Complaint, plaintiffs attack First Eagle's practice of treating income and capital gains as assets, claiming that they are in fact, liabilities: ¶ 6 (shares are "inflated as a result of 5 these unrecognized or miscategorized liabilities"), ¶ 7 ("treating accrued income amounts as 'assets' instead of liabilities (as they should be treated) triggers increased taxes to investors"), ¶ 11

3. *First Eagle's alleged failure to adequately disclose the NAV being inflated during the entire distribution cycle.*

Plaintiffs argue that First Eagle's disclosure regarding the distribution to stockholders is misleading because it "suggests that the NAV reduction is solely the result of the recognition of the impending distribution on the ex-dividend date, and not before."[74] First Eagle counters that plaintiffs distort the disclosure in an attempt to limit the disclosure to mean that the impact of the undistributed income and capital gains occurs only on the ex-dividend date.

First Eagle disclosed that when stock is purchased, the price may include undistributed income and capital gains.[75] Stock can be purchased at any time, and so it follows, that the accounting of income and capital gains, as disclosed by First Eagle, can impact the NAV at any time. First Eagle also disclosed that income and

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(including "accrued dividends and capital gains as fund 'assets,' without including the known liabilities associated with the impending, required distributions"), ¶ 74.b. ("unpaid dividends/capital gains are treated as though they were permanent fund assets, despite actually constituting liabilities"), ¶ 74.d. ("failed and fail to disclose that the accrued distributions (which are, in fact, liabilities and not assets"). But plaintiffs concede in their Answering Brief that the well-recognized accounting practice adopted by First Eagle does not violate any SEC regulation or GAAP. AB at 12. Moreover, plaintiffs do not actually assert a claim based on this alleged mis-categorization. That plaintiffs would like income and capital gains recorded as liabilities does not make First Eagle's disclosures misleading and plaintiffs cite no cause for such a proposition.

Similarly, plaintiffs seem to challenge the Funds' failure to make daily distributions (AB at 4, Am. Compl. ¶ 44 ("there is no reason that Defendants cannot implement daily distributions…") and Am. Compl. ¶ 44 n.7 ("Daily distribution of income is recognized as an acceptable approach by regulators, including the SEC's Division of Investment Management.") but plaintiffs do not actually assert a claim based on the timing of distributions.

[74] AB at 6, 16 ("investors 'are overpaying throughout the entire distribution cycle of a mutual fund, not just on the eve of a payout.").

[75] OB, Ex. 1 at 365 (Registration Statement).

capital gains are distributed on the ex-dividend date, thereby reducing the NAV.[76] The disclosure does not limit the impact of the Funds' accounting method on the NAV *only* to the distribution date.

Plaintiffs' theory that there is harm over the entire distribution cycle is based on the allegation that the NAV is "artificially inflated"[77] on every day there is undistributed income or capital gains (except the ex-dividend date). The alleged artificial inflation, however, is the result of a well-recognized accounting method in the mutual fund industry.[78] Simply labeling the accounting method's impact as "artificial" does not make the disclosure misleading. Even at the motion to dismiss stage, the court does not give credence to conclusory allegations.[79]

4. *First Eagle's alleged failure to adequately disclose its fees*.

Plaintiffs argue that First Eagle failed to accurately disclose its fees. Plaintiffs acknowledge that First Eagle disclosed that fees are expenses calculated as a percentage of the value of the investment and are paid "at the annual rate of the average daily value of [the Fund's] net assets,"[80] but contend that this is misleading

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[76] OB, Ex. 1 at 195 (Prospectus).
[77] Am. Compl. ¶ 95 ("Defendants' failure to account for these distributions as 'liabilities,' while recognizing them only as 'assets,' materially inflated the NAV for investors by significant percentages…").
[78] *See Wilbush v. Ambac Fin. Grp., Inc.*, 271 F. Supp.3d 473, 488 (S.D.N.Y 2017) ("Where, as here, a plaintiff claims that a company's financial statements are misleading but fails to allege that the company violated a single Generally Accepted Accounting Principle ('GAAP') or industry standard, the plaintiff falls short of plausibly alleging a misstatement or omission.").
[79] *Surf's Up Legacy Partners,* 2021 WL 117036, at *6.
[80] AB at 7.

because the "net assets" used for the fee calculation "includes undistributed liabilities."[81] In plaintiffs' view, because the NAV is artificially inflated by these undistributed liabilities (income and capital gains), First Eagle's fees are likewise artificially inflated.[82] Defendants respond that the fee calculation was disclosed throughout its registration statements[83] and that this claim is just another iteration of plaintiffs' argument that defendants failed to accurately disclose "net assets."[84]

The Court agrees with Defendants. Plaintiffs' argument on the fees disclosure is based solely on the alleged artificially inflated NAV, due to income and capital gains not being recorded as liabilities. As discussed above, plaintiffs' disclosure violation on this point fails to state a claim and therefore, the claim based on fees also fails.

5. *First Eagle's alleged omission of disclosures required by Form N-1A.*

The Amended Complaint alleges that Form N-1A requires the following disclosures:[85]

> Item 9(c): "[d]isclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole

[81] *Id.*
[82] *Id.* at 15.
[83] OB, Ex. 1 at 188 ("each Fund pays the Adviser a fee at the annual rate of the average daily value of its net assets"), 334 (disclosing fees as a percentage "of the Fund's average daily net assets"), 348 (disclosing fees as a percentage "of the average daily net assets") (Registration Statement), 205 (same) (Prospectus).
[84] OB at 16.
[85] Am. Compl. ¶¶ 58-63.

is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return."

Item 11(a): "[d]escribe the procedures for pricing the Fund's shares, including: (1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost) . . . . "

Item 11(d): "[d]escribe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions."

Item 11(f): "[d]escribe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that: (i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect."

Item 11(g): an exchanged-traded fund disclose the number of days when a fund's market price was greater than its net asset value, and the number of days when its market price was less than its net asset value (i.e. premium or discount) for the most recently completed calendar year.

Item 23: "[d]escribe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets." The Instructions for Item 23 state that a fund should "[d]escribe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares."

Plaintiffs assert that these Items, read together, impose an affirmative obligation on First Eagle to disclose its accounting practices for treating dividend and capital gain income, its inclusion of assets in the NAV, the inflationary impact

of its accounting practices on the NAV and fees, and "the risk or loss incurred by an investor from investing in a fund with high income levels."[86]

Defendants responded to each in their Opening Brief:

Item 9(c) concerns investment risks, not accounting methodologies. Further, it does not require disclosure of general investment risk, but only risks specific to which the particular fund is expected to be subject.[87] Defendants argue that nothing about the "well-recognized" accounting practice is unique to the Funds, and thus, there is no violation of 9(c).

Item 11(a) does not concern accounting information but requires disclosure of pricing shares, which First Eagle disclosed.[88]

Item 11(d) does not concern accounting information but requires disclosure of dividends and distributions, which First Eagle disclosed.[89]

Item 11(f) requires disclosure relating to tax consequences, which First Eagle disclosed.[90]

Item 11(g) applies to an "exchange-traded fund," and First Eagle is not such a fund, so this disclosure requirement does not apply.[91]

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[86] Am. Compl. ¶ 64.
[87] OB at 22 (citing *Morgan Stanley*, 592 F.3d at 363 and *Ulferts*, 554 F.Supp.2d at 576).
[88] OB at 22; Ex. 1 at 353-54 (Registration Statement).
[89] *Id.*; Ex. 1 at 356 (Registration Statement).
[90] *Id.*; Ex. 1 at 109 (Prospectus).
[91] OB at 23.

Item 23 does not concern accounting information but requires disclosure of method of valuing assets, which First Eagle disclosed.[92]

Plaintiffs counter by attacking the response as "self-serving" and minimizing First Eagle's disclosure obligations. Plaintiffs do not respond to any of the disclosures identified by First Eagle or attempt to explain why Defendants are wrong, except to challenge the duty to disclose risks.[93] Plaintiffs argue that Item 9(c) requires First Eagle to make disclosures relating to its "chosen accounting practice" because it is particular to this fund, as not every mutual fund uses this accounting method.[94]

Form N-1A is designed "to attempt to balance the costs and benefits of additional disclosures in the context of a specific class of issuers" – mutual funds.[95] "'[A] corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact.'"[96] Indeed, Form N-1A does not mandate disclosures beyond those specified in the instructions.[97] An issuer also need not disclose general risks of investing through the markets, but rather, only "unique"

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[92] OB at 23; Ex. 1 at 353 (Registration Statement).
[93] AB at 17-18.
[94] *Id.* at 18.
[95] *Morgan Stanley*, 592 F.3d at 366. Plaintiffs take issue with Defendants' reliance on *Morgan Stanley* because that court construed Item 4, not Item 9(c). AB at 17 n.5. The statements in *Morgan Stanley* regarding risk disclosure, however, were not limited to Item 4.
[96] *Morgan Stanley*, 592 F.3d at 366 (quoting *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993)).
[97] *Id.* at 361-62.

risks relating to the particular fund.[98] As plaintiffs acknowledge, the accounting method used by First Eagle is widely recognized in the mutual fund industry. That it is not used by every fund does not make it unique to First Eagle, and plaintiffs cite no authority for such a proposition.

Plaintiffs failed to state a claim for violations of Form N-1A disclosures.

D. ***Plaintiffs' Section 15 claim fails.***

Plaintiffs' Section 11 and 12(a) claims (Counts I and II) are asserted against First Eagle and Distributors. Plaintiffs assert in Count III that Management is liable under Section 15 as a Control Person for the violations in Counts I and II. Because plaintiffs fail to state a claim in Counts I and II, their Section 15 claim fails as a matter of law.[99]

Because plaintiffs fail to state a claim under Section 11 or 12(a), the Court does not reach the remainder of Defendants' arguments.

E. ***Plaintiffs' Request to Amend is Denied.***

Effective March 20, 2026, the Superior Court adopted new rules governing Complex Commercial Litigation Division cases.[100] Among them is Rule 143(a)(5), which states in relevant part, "[i]f a party wishes to amend the party's complaint in

[98] *Id.* at 364 (noting that the SEC designed Form N-1A "'to elicit risk disclosure *specific to that fund*'") (emphasis in original) (citation omitted).
[99] *Duncan v. Vantage Corp.*, 2019 WL 1349497, at *5 (D. Del. Mar. 26, 2019).
[100] *See* Super. Ct. Civ. R. 141–146.

response to a motion to dismiss under Rule 12(b)(6), the party must amend the party's complaint – or seek leave to amend –…[b]efore the party's response to the motion is due," and upon a failure to do so, "unless the Court [finds] for good cause shown," a dismissal is with prejudice. The new rules apply to all pending cases.

Although plaintiffs' Answering Brief was filed before the new rules became effective, they had the opportunity to attempt to overcome Defendants' arguments for dismissal by filing the Amended Complaint after Defendants filed their opening brief in support of dismissal of the original complaint. While the Answering Brief requested leave to amend under Rule 15(a)'s liberal standard, the Court permitted the parties to file supplemental briefs on the Rule 143(a)(5) standard.[101]

The purpose of Rule 143(a)(5), which is modeled after Court of Chancery Rule 15(a)(5)(B) (formerly Rule 15(aaa)), is "'to curtail the number of times that the Court … [is] required to adjudicate multiple motions to dismiss the same action.'"[102] The rule is intended to conserve the court's and litigants' resources.[103]

Arguing there is no ground to deny the motion to amend, plaintiffs apply the factors considered under Rule 143(a)(2), which incorporates the Rule 15(a) standard. Plaintiffs contend that they should have an opportunity to cure any deficiencies

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[101] D.I. 39, 40.
[102] *Dinkevich v. Deutsche Telekom AG*, 2025 WL 1752098, at *3 (Del. Ch. June 20, 2025) (quoting *Braddock v. Zimmerman*, 906 A.2d 776, 783 (Del. 2006)).
[103] *Sylebra Cap. P'rs Master Fund, Ltd. v. Perelman*, 2020 WL 5989473, at *7 n.81 (Del. Ch. Oct. 9, 2020); *East Sussex Assoc., LLC v. West Sussex Assoc., LLC*, 2013 WL 2389868, at *1 (Del. Ch. June 3, 2013).

found by the Court because the Amended Complaint raises "complex and novel claims" and the issues raised by Defendants are "technical in nature."[104] Plaintiffs further assert that there will be no prejudice to Defendants if an amendment is permitted because discovery is voluntarily stayed and the amendment would only be their second. Finally, plaintiffs have not delayed in seeking to amend, which, they say, weighs in favor of dismissal without prejudice.[105]

Defendants counter that plaintiffs are conflating Rule 143(a)(2) standards with Rule 143(a)(5) standards and they have failed to even attempt to show good cause.

Although the court freely grants leave to amend under Rule 15(a) and 143(a)(2), "applying that same standard under Rule [143(a)(5)] 'would surely undermine the policy embodied in the more stringent rule.'"[106] Other than making vague arguments that may satisfy a Rule 15(a) or 143(a)(2) analysis, plaintiffs make no attempt to show good cause. For this reason alone, the request for dismissal without prejudice is DENIED.[107]

The remainder of plaintiffs' arguments also do not justify a dismissal without prejudice. That the claims may be "complex and novel" does nothing to meet the

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[104] D.I. 39, p. 2.
[105] *Id.*, p. 4.
[106] *Dinkevich*, 2025 WL 1752098, at *3 (quoting *Stern v. LF Cap. P'rs, LLC* 820 A.2d 1143, 1146 (Del. Ch. 2003)).
[107] *In re P3 Health Grp. Hldgs., LLC*, 2022 WL 15026696, at *2 (Del. Ch. Oct. 27, 2022) ("Conclusory assertions that a with-prejudice dismissal would be unjust are not sufficient to establish good cause under Rule 15(aaa).").

good cause standard. The court often faces cases raising novel arguments in complex legal and factual scenarios.

The parties dispute whether Defendants' grounds for dismissal are technical in nature, but accepting plaintiffs' argument on this point, they have already had an opportunity to overcome those technicalities. Plaintiffs' claims are based on Defendants' public disclosures (or omissions from those disclosures) so they have the full universe of facts. Simply because the Court has now ruled on the dismissal arguments, which may help plaintiffs plead their claims, does not show good cause because "[n]early every plaintiff who receives a decision dismissing their complaint will have a better idea of how to improve their pleading."[108]

Plaintiffs' argument that Defendants will suffer no prejudice misses the mark. "The parties went through full briefing …, yet [the Plaintiffs] did not once identify any additional allegations that might bolster [their] claim."[109] Plaintiffs failed to even respond substantively to some of Defendants' arguments. Permitting an amendment here would run counter the purpose of the rule—to conserve judicial and litigant's resources.

Accordingly, plaintiffs' request for leave to amend is DENIED.

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[108] *Otto Candies, LLC v. KPMG, LLP*, 2019 WL 1856766, at *3 (Del. Ch. Apr. 25, 2019).
[109] *In re USG S'holder Litig.*, 2021 WL 930620, at *3 (Del. Ch. Mar. 11, 2021) (citation omitted).

VIII. *Conclusion*

Plaintiffs' Section 11 and 12(a) claims are refuted by the Defendants' disclosures and plaintiffs fail to set forth any viable claim that the disclosures are misleading. Accordingly, Counts I and II are **DISMISSED**.

Because plaintiffs' Section 15 claim is dependent on the viability of the Sections 11 and 12(a) claims, Count III is also **DISMISSED**.

Under Rule 143(a)(5), plaintiffs having failed to show good cause, the dismissal is **WITH PREJUDICE**.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge