IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LORD ABBETT AFFILIATED FUND, INC., *et al*., Individually and on Behalf of All Others Similarly Situated, *Plaintiffs*, v. NAVIENT CORPORATION, *et al.*, *Defendants*.	C.A. No. 16-112-MN Judge Maryellen Noreika **ORAL ARGUMENT REQUESTED** **PUBLIC VERSION** **FILED ON: DECEMBER 27, 2019**

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR CLASS CERTIFICATION, APPOINTMENT OF CLASS REPRESENTATIVES, AND APPOINTMENT OF CLASS COUNSEL

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GLOSSARY

TERM	MEANING
2014 Debt Offering	Navient's registered offering on or about November 6, 2014 of $500 million in principal amount of 5.000% Senior Notes due 2020 (CUSIP 63938CAA6) and 5.875% Senior Notes due 2024 (CUSIP 63938CAB4)
2015 Debt Offering	Navient's registered offering on or about March 27, 2015 of $500 million in principal amount of 5.875% Senior Notes due 2021 (CUSIP 63938CAC2)
BLB&G	Lead Counsel Bernstein Litowitz Berger & Grossmann LLP
CFPB	Consumer Financial Protection Board
Class	All persons and entities who purchased or otherwise acquired Navient's publicly traded securities, or sold Navient put options, from April 17, 2014 through September 29, 2015, inclusive;[1] and/or all persons and entities who purchased or otherwise acquired Navient's 5.000% Senior Notes due 2020 (CUSIP 63938CAA6), 5.875% Senior Notes due 2024 (CUSIP 63938CAB4), and 5.875% Senior Notes due 2021 (CUSIP 63938CAC2) from November 3, 2014 through December 28, 2015, inclusive—and who were damaged thereby. Excluded from the Class are Defendants, their officers and directors, all members of their immediate families, their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.
Complaint or SAC	The Second Amended Class Action Complaint (D.I. 59) filed on November 17, 2017
Exchange Act	Securities Exchange Act of 1934
Exchange Act Class Period	April 17, 2014 through September 29, 2015
FHFA	Federal Housing Finance Agency
FHLB	Federal Home Loan Bank

[1] This includes the publicly traded securities consolidated by Navient pursuant to its April 30, 2014 separation from Sallie Mae.

TERM	MEANING
FHLB-DM	Federal Home Loan Bank of Des Moines
Friedlander	Liaison Counsel Friedlander & Gorris P.A.
Hartzmark Rpt.	Expert Report of Michael L. Hartzmark, Ph.D, dated September 6, 2019, attached as Ex. I to the Robinson Decl.
The Lord Abbett Funds	Lead Plaintiffs Lord Abbett Affiliated Fund, Inc., Lord Abbett Equity Trust – Lord Abbett Calibrated Mid Cap Value Fund, Lord Abbett Bond-Debenture Fund, Inc., and Lord Abbett Investment Trust – Lord Abbett High Yield Fund
Motion or **Mot.**	The Lord Abbett Funds' Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel, and accompanying Memorandum of Law (D.I. 104)
MTD Order	*Lord Abbett Affiliated Fund, Inc. v. Navient Corp.*, 363 F. Supp. 3d 476 (D. Del. 2019)
Navient	Defendant Navient Corporation
Navient Defendants	Defendants Navient, John F. ("Jack") Remondi, Somsak Chivavibul, John M. Kane, William M. Diefenderfer, III, Ann Torre Bates, Diane Suitt Gilleland, Linda Mills, Barry A. Munitz, Steven L. Shapiro, Jane J. Thompson, and Barry L. Williams
Navient Notes	210 publicly-traded debt securities that comprise all of Navient's senior unsecured debt, which had similar credit ratings and default risk based on Navient's financial condition, seniority, rank and security.
Exemplar Notes	13 Navient Notes that collectively constituted a supra-majority (nearly 76%) of the total face value of debt securities issued by Navient as of September 28, 2015.
Non-Core Notes	Navient Notes other than the 13 Exemplar Notes, consisting of 197 Navient Notes.
Offerings	The 2014 Debt Offering and the 2015 Debt Offering, collectively
Offering Documents	Documents issued in connection with the Offerings, including the Form S-3 Shelf Registration Statement and Prospectus filed on July 18, 2014; the Rule 424(b)(5) Preliminary Prospectus Supplements filed on November 3, 2014 and March 25, 2015; the Rule 433 Free Writing Prospectuses filed on November 4, 2014 and March 25, 2015; the Rule

TERM	MEANING
	424(b)(2) Prospectus Supplements filed on November 5, 2014 and March 26, 2015; and all documents incorporated by reference therein.
PELs	Navient's Private Education Loans segment
Plaintiffs or **Lead Plaintiffs**	The Lord Abbett Funds
Registered Notes	The Navient Senior Notes sold in the 2014 Debt Offering and the 2015 Debt Offering (CUSIPs 63938CAA6, 63938CAB4, and 63938CAC2), collectively
Robinson Decl.	Declaration of Jeremy P. Robinson In Support Of Plaintiffs' Motion for Class Certification, Appointment of Class Representatives, and Appointment of Counsel, dated September 6, 2019 (D.I. 106)
Sallie Mae	Sallie Mae Corporation
Scheduling Order	The Court's March 4, 2019 Order (D.I. 81)
Securities Act	The Securities Act of 1933
Securities Act Class Period	November 3, 2014 through December 28, 2015
Spin-Off	The corporate transactions completed in April 2014 resulting in Sallie Mae's separation into two different companies, pursuant to which investors' Sallie Mae shares were exchanged for the newly-issued shares in two "***distinct and separate entities***," Navient and SLM BankCo.
Underwriter Defendants or the **Underwriters**	Defendants Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities LLC, RBC Capital Markets, LLC, Barclays Capital Inc., Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBS Securities Inc., and Wells Fargo Securities, LLC

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INTRODUCTION

Defendants agree that a Class of Navient stock and options investors should be certified. But, they argue that two types of investors harmed by Defendants' misconduct should be excluded. Defendants are wrong. The Class proposed in the Motion should be certified in full.[1]

First, Defendants ask to exclude the numerous investors who acquired Navient's newly-issued shares (the "Initial Navient Shares") based on Defendants' misstatements when those shares were traded in exchange for Sallie Mae shares in the Spin-Off. Defendants claim the Initial Navient Shares were never in the case and they were surprised to see those shares in the Motion. That is pure fiction. The Initial Navient Shares have always been part of this Action. Indeed, the Lord Abbett Funds' certification filed in April 2016 includes hundreds of thousands of Navient shares "***acquired from [the] Sallie Mae (SLM) spin-off***." Ex. N at 9. This certification was the basis for the Funds' appointment as Lead Plaintiff, it is expressly incorporated in the Complaint, and it is acknowledged in Defendants' Answer. Defendants even served discovery directed at shares received in "***Navient's spin-off from Sallie Mae***" months before the Motion. Defendants also object to the phrase "otherwise acquired" in the proposed Class definition. But this simply reflects the fact that the Exchange Act defines a "purchase" to include "otherwise acquire." 15 U.S.C. §78c. By force of statute, investors who "otherwise acquired" Navient shares have always been in this case. Thus, Defendants' claims of surprise and prejudice fail.

Defendants' other attacks are equally meritless. For example, Defendants incorrectly argue that investors' acquisition of Initial Navient Shares does not qualify as a "purchase" under the

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[1] Unless otherwise noted, capitalized terms are defined in the Complaint (D.I. 59) or the Glossary (*supra*); emphasis is added; and internal citations and punctuation are omitted. Citation to "¶_" refers to paragraphs in the Complaint and "Ex. _" refers to the consecutively numbered exhibits to the Robinson Decl. and the Reply Declaration of Jeremy P. Robinson filed herewith.

Exchange Act. To start, this is a class wide merits issue, which presents no obstacle to certification. Further, the law and the facts establish that the Exchange Act covers this exchange of Sallie Mae shares for new shares in two distinct companies, including the newly created Navient, which was a different company with different risks and prospects from Sallie Mae.

Second, Defendants seek to exclude investors in the Navient Notes, attacking Plaintiffs' proof of market efficiency. Plaintiffs' expert opined that the market for the Navient Notes was efficient and thus all investors are entitled to the fraud-on-the-market presumption. Defendants do not offer an affirmative opinion to the contrary and disregard several of the well-established *Cammer* and *Krogman* factors. Instead, they focus on criticizing aspects of Plaintiffs' experts' methodology on only one factor (*Cammer* V). But Defendants ignore that courts have endorsed this method and, in any event, routinely certify securities class actions based on satisfaction of the other *Cammer* and *Krogman* factors alone. Also, market efficiency aside, the Court sustained Plaintiffs' omissions claims, entitling investors to the *Affiliated Ute* presumption of reliance.

Plaintiffs respectfully submit that the Motion should be granted in full.

ARGUMENT

I. DEFENDANTS AGREE THAT A CLASS SHOULD BE CERTIFIED.

Defendants agree that a class should be certified, including Navient common stock and options investors for Exchange Act claims and certain Navient Notes investors for Securities Act claims. Op. 2, 20. They also concede that Plaintiffs and Counsel satisfy the Rule 23 requirements.

II. THE CLASS PROPERLY INCLUDES THE INITIAL NAVIENT SHARES.

Defendants' lead argument is that the Court should exclude the thousands of investors who acquired the Initial Navient Shares in the Spin-Off because they were purportedly never included in the case and, thus, the Motion is a "back-door effort to amend the complaint." Op. 1. Defendants are wrong.

A. This Case Has Always Included The Initial Navient Shares.

The Initial Navient Shares have been in this Action since its inception. Indeed, in moving for appointment as Lead Plaintiff in 2016, the Lord Abbett Funds' certification expressly included "327,700 Navient common stock shares . . . ***acquired*** from [the] ***Sallie Mae (SLM) spin-off***." Ex. N at 9. The Court cited that certification in appointing the Funds as Lead Plaintiff. D.I. 32.

Defendants assert that the "SAC does not mention the Spin Shares at all." Op. 6. This is incorrect. The Complaint expressly incorporates the Lord Abbett Funds' certification including the Initial Navient Shares. ¶28. It also discusses the Spin-Off (¶¶28-29) and alleges several false statements made in connection with the Spin-Off and ***before*** investors acquired the Initial Navient Shares. ¶¶33, 50, 192. Defendants ignore these facts. In truth, there is no amendment.

Defendants' own actions eviscerate their claims of surprise and prejudice. To start, their Answer acknowledges Plaintiffs' certification including the Initial Navient Shares and each allegation about the Spin-Off. D.I. 82, ¶¶28, 29-33, 50, 192. Defendants also served discovery directed at the Spin-Off and the Initial Navient Shares—***months before Plaintiffs filed the Motion***. Ex. O at 6-7 (July 3, 2019 Document Request No. 1 seeking documents concerning the shares "received in Navient in connection with ***Navient's spin-off from Sallie Mae***"), Ex. P at 6 (Interrogatory regarding "transactions" in both Sallie Mae and Navient securities). Plaintiffs responded by stating *inter alia* that "327,000 Navient common stock shares were ***acquired from [the] Sallie Mae (SLM) spin-off***." Ex. Q at 21. Thus, Defendant's claims cannot be credited.

Defendants object to the phrase "otherwise acquired" in the Class definition. Op. 4, 6. But that simply reflects the Exchange Act's explicit definition of the term "purchase" to include "***otherwise acquire***." *See* 15 U.S.C. §78c(a)(13). By force of statute, investors who "otherwise acquired" Initial Navient Shares have ***always*** been included in this case. Defendants' disregard

for the Exchange Act's plain language provides no basis to exclude these investors from the Class.[2] Regardless, even if an amendment (it is not), courts will readily amend class definitions to incorporate definitions contained in the statute. *See, e.g.*, *City Select Auto Sales, Inc. v. David Randall Assocs., Inc.*, 296 F.R.D. 299, 321 (D.N.J. 2013) (adding "entities" to class definition to "follow[] the [statutory] language, which provides a private right of action to 'a person or entity'").

In reality, Defendants fabricated their "amendment" theory as a pretext to improperly raise a Rule 12(b)(6) dismissal argument in the context of a Rule 23 motion. But the Rule 23 criteria do ***not*** include the Rule 12(b)(6) grounds. Defendants, after going years without raising the issue through multiple motions to dismiss, must wait for summary judgment or trial if they wish to dispute inclusion of the Initial Navient Shares. They cannot do so through a procedurally improper attempt at another motion to dismiss. Indeed, Defendants themselves admit that this issue turns on "the specific facts of the case," and they do not raise any individualized issues on point. Op. 7. Thus, Defendants concede this is a common issue that can be resolved class wide, which *supports* certification. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 468 (2013).

B. The Exchange Act Applies To The Acquisition of Initial Navient Shares.

In any event, Defendants are wrong to assert that acquisition of the Initial Navient Shares is not covered by the Exchange Act. Op. 8-10. ***First,*** as noted above, the Exchange Act includes securities "otherwise acquired" within its definition of "purchase"—and Defendants admit that investors "***acquired*** Navient shares in the 2014 Spin[-Off]." Op. 9. Courts also routinely certify Exchange Act classes for "purchasers ***or*** acquirers." *See, e.g.*, *Skeway v. China Nat. Gas, Inc.*, 304

[2] In a footnote (Op. 4 n.2), Defendants claim Plaintiffs "understood" the Initial Navient Shares were not in the case. They are incorrect. Plaintiffs' witness confirmed that "purchased" stock was in the case, which legally includes "acquired" stock (*supra*), and that shares listed on the Funds' certification, including the Initial Navient Shares, ***are*** part of this Action. Ex. R at 99:3-9.

F.R.D. 467, 477 (D. Del. 2014).

Second, the facts confirm that the Exchange Act covers the Initial Navient Shares. Defendants concede that a transaction constitutes a "purchase" when it results in investors owning stock in "a substantially different company with substantially different assets and prospects." Op. 7 (quoting *In re Penn Cent. Sec. Litig., M.D.L. Docket No. 56*, 494 F.2d 528, 534 (3d Cir. 1974)). That is true of Navient, as Defendants repeatedly admitted. For example, in a May 2013 presentation, Defendant Remondi stated that the Spin-Off would split Sallie Mae into two "***distinct and separate entities***" with "***very different . . . regulatory frameworks.***" Ex. S. Likewise, Defendants' Registration Statement for the Initial Navient Shares flagged Navient's "***distinct operating priorities and strategies***" and that it provided investors a "***distinct and targeted investment opportunit[y]***." Ex. T at 7. The market also understood that Navient was materially different from Sallie Mae. For example, after the Spin-Off, Moody's downgraded Navient's debt due to its "***significantly changed business and financial profile*** that results from the loss of the earnings, cash flows, equity, and potential market value of the new SLM Corp." Ex. U. Thus, investors acquired the Initial Navient Shares from "a significant change in the nature of the investment or in the investment risks," which constitutes a "purchase" under the Exchange Act. *Deutschman v. Beneficial Corp.*, 761 F. Supp. 1080, 1085, 1087 (D. Del. 1991).

Defendants even recognized that an "investment decision" was involved in the Spin-Off. In April 2014, Defendants advised investors to "***carefully consider*** the . . . risks and other information in this information statement in ***evaluating Navient and Navient's common stock***" prior to the exchange of Sallie Mae shares for the Initial Navient Shares. Ex. V at 19; *see also* Ex. W at 61 ([REDACTED] for [REDACTED] in Navient.).

Likely aware that the record belies their position, Defendants do not submit ***any*** actual

evidence on their "Spin Share" argument. Op. 7-8. Their only reference to the record here cites Plaintiffs' expert, who Defendants mischaracterize and, regardless, the expert testified that he was "not giving a legal opinion related to the spin-off." Ex. X at 55:17-56:1. This cannot suffice.

Defendants rely heavily on cases that—unlike here—involved ***no exchange of the original shares***. In *Caremark*, the company "transfer[ed] the ownership of the subsidiary" to its shareholders, who received shares of the subsidiary ***while still retaining their original shares*** of the parent. 136 F.3d 531, 532-33, 535 (7th Cir. 1998). Likewise, in *Adelphia*, shareholders "***were not forced to exchange***" their stock, they simply received stock "in addition to the . . . stock they already held, and their investment . . . remained unchanged." 398 F. Supp. 2d 244, 260 n.12 (S.D.N.Y. 2005). Here, investors' Sallie Mae shares were ***exchanged*** for shares of two materially different companies—Navient and SLM BankCo. *Deutschman*, 761 F. Supp. at 1087 ("illogical" that an "exchange . . . could be anything other than [a] purchase[]"). Defendants also assert that the Initial Navient Shares were acquired "before any alleged misrepresentations inflated the price of those securities." Op. 9. That is wrong. The Court sustained Plaintiffs' claims that Defendants' fraud artificially inflated the value of the Initial Navient Shares beginning April 17, 2014—***before*** investors exchanged their Sallie Mae shares for the Initial Navient Shares. MTD Order at 491. This sort of "share exchange" for a "newly created corporation" is exactly what the *Penn Central* court stated is "well established" as "within the scope of 10(b)." 494 F.2d at 533.

Finally, Defendants' statute of limitations argument fails because it rests entirely on their demonstrably incorrect "amendment" argument. Op. 9-10. This is also a common issue to be resolved class wide. *See In re Cmty. Bank of N. Virginia*, 622 F.3d 275, 295 (3d Cir. 2010).

III. THE CLASS PROPERLY INCLUDES THE NAVIENT NOTES.

Defendants ask the Court to exclude investors in the Navient Notes based on their expert's claims regarding market efficiency. It is critical to note, however, that Defendants' expert does

not opine that the market for the Navient Notes was ***in***efficient. Ex. Y at 90:16-24 (confirming that he does "not opine that the market for the Navient Notes is inefficient"). Rather, he criticizes Plaintiffs' expert's analysis on certain points. Those criticisms are no barrier to certification.

A. The Fraud-On-The-Market Presumption Applies To The Navient Notes.

Defendants Disregard Most Relevant Legal Factors. Defendants agree that courts look to the *Cammer* and *Krogman* factors to decide market efficiency, but argue that only *Cammer* V matters. Op. 10-11. They are wrong. "Courts have routinely found a market efficient based on a showing that the first four *Cammer* factors only are met." *City of Cape Coral Mun. Firefighters' Ret. Plan v. Emergent Biosol'ns, Inc.*, 322 F. Supp. 3d 676, 688 (D. Md. 2018) (collecting cases; rejecting same approach Defendants take here, using the same expert); *Roofer's Pension Fund v. Papa*, 2019 WL 6015392, at *15 (D.N.J. Nov. 14, 2019) (absence of *Cammer* V "not enough to defeat market efficiency"); *Waggoner v. Barclays PLC*, 875 F.3d 79, 97 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 1702 (2018) (emphasizing first "four *Cammer* factors").[3]

The same result is warranted here. Defendants do not dispute that several factors are met: *Cammer* Factors I (trading volume), III (market makers) and IV (Form S-3 eligibility) and *Krogman* Factors 1 (market capitalization), 2 (bid-ask spread) and 3 (float). Ex. Z ¶8. Otherwise, Defendants offer only cursory arguments that lack merit. For example, Defendants say Plaintiffs "emphasize" information about Navient's stock, not its debt. Op. 11. This is sleight of hand. Plaintiffs' Motion plainly covered *Cammer* Factors I to IV and the *Krogman* Factors with respect to Navient's debt securities (Mot. 12-17), which even Defendants cannot deny. Likewise,

[3] In a footnote (Op. 11 n.3), Defendants ask the Court to disregard this established law based on their mischaracterization of *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1425 (3d Cir. 1997). *Burlington* has no application here because it said nothing about *Cammer V*, did not even analyze market efficiency, and dealt with a motion to dismiss—***not*** class certification.

Defendants assert that Navient's extensive analyst coverage, which satisfies *Cammer* II, "most[ly] . . . focused on Navient common stock." Op. 11. Defendants miss the point: these analyst reports supplied information about ***Navient***, which is relevant to both its equity and debt securities. *See Halliburton Co. v. Erica P. John Fund*, 573 U.S. 258, 266-272 (2014). Even Defendants' out-of-circuit authority admits that "equity analyst coverage is relevant to the efficiency of an issuer's debt." *In re Countrywide Fin. Corp. Sec. Litig.*, 273 F.R.D. 586, 615 (C.D. Cal. 2009).

Defendants Disregard The Law Regarding *Cammer* V. Contrary to Defendants' claim that he assumed efficiency (Op. 13), Plaintiffs' expert performed detailed "cause-and-effect" analyses on 13 Exemplar Notes, which totaled nearly 76% of the total outstanding face value of Navient's debt, and found the market was efficient. Ex. I ¶¶162, 211-233. Defendants do not dispute the results of those analyses. Instead, based on the say-so of their competing expert, they critique aspects of Plaintiffs' methodology, arguing that Navient's debt securities cannot be viewed as a homogeneous pool of debt for analyzing market efficiency. Defendants are wrong.

To start, Defendants ignore that courts have endorsed this methodology. In the seminal *Enron* securities case, the court approved an analysis of $4.3 billion worth of Enron debt securities through the analysis of a single proxy security—one bond with a face value of $250 million (only 5.8% of the total outstanding face value of the debt). *In re Enron Corp. Sec.*, 529 F. Supp. 2d 644, 746-47 (S.D. Tex. 2006) (explaining that "if one of the Enron registered bonds is known to have traded in an efficient market, then one can infer that similar Enron bonds would have also traded in efficient markets because the bases for valuation, such as interest rate environment and default risk, are similar"). Defendants cannot distinguish *Enron*, so they disregard it. Indeed, Defendants' expert admitted under oath: "I have no opinion on the *Enron* case." Ex. Y at 78:4-5. Because Defendants have ***zero*** response to a significant authority supporting Plaintiffs' methodology, their

attack necessarily fails. Defendants also concede that ratings agencies and Navient grouped the Notes together. Op. 14. They dismiss this as arising from "similar default risk," but that in fact justifies a collective analysis. *Enron*, 529 F. Supp. 2d at 746 (default risk is a "similar" "bas[is] for valuation" of a company's debt securities, justifying a collective analysis).

The Third Circuit also endorsed a collective approach to analyzing debt securities in *DVI*, where the notes were "***separate*** tranches of notes that entered the market at ***different times***" and in different amounts. *In re DVI Inc. Sec. Litig.*, 249 F.R.D. 196, 214 (E.D. Pa. 2008), *aff'd*, 639 F.3d 623, 633 (3d Cir. 2011). In *DVI*, the Third Circuit cited the *Enron* certification opinion with approval, making Defendants' disregard for *Enron* even more conspicuous. 639 F.3d at 633 n.15. Defendants criticize Plaintiffs' expert for not doing a correlation analysis—although not required by *Cammer* or *Krogman*—and rely on such an analysis by their competing expert. Op. 14-15. But, properly adjusted to the reality of how the Notes traded, Defendants' own analysis demonstrates that the returns of the Navient Exemplar Notes ***are correlated***. Ex. Z ¶¶70-72. This confirms the propriety of Plaintiffs' expert's methodology and is fatal to Defendants' critique.[4]

Defendants' other challenges also fail. They claim Plaintiffs' expert admitted to selection bias (Op. 17)—but he testified that he "***said just the opposite***." Ex. X at 174:13-14. Defendants say Plaintiffs "evaluated each note individually" (Op. 14)—but cite proof to the contrary. A list of separate notes proves nothing and Plaintiffs' witness testified to assessing the Notes "***relative***" to "all other securities issued by Navient," which, if anything, supports a collective analysis. Ex. R

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[4] Defendants' authorities do not support them. *Schleicher v. Wendt* denied certification where, unlike here, "plaintiffs [did] not provided ***any*** information on the market for" debt securities. 2009 WL 761157, at *6 (S.D. Ind. Mar. 20, 2009). In *Countrywide*, the court took a different approach from *Enron* only because of the "unique factual circumstances" of that case, including additional data availability and concerns about the use of a ten-day event study for a nearly four-year class period. 273 F.R.D. at 589 n.4, 619-20. Defendants make no comparable distinction here.

at 100:6-12; *see also id.* at 101:14-16 (discussing the "best ***relative*** value"). Defendants assert that one exchange-traded Note "skew[ed]" Plaintiffs' analysis (Op. 16), but provide no basis to exclude it. They also ignore the Third Circuit's approval of a collective analysis where one bond was exchange-traded, but not the other. *DVI*, 249 F.R.D. at 214, *aff'd*, 639 F.3d 623.

B. The *Affiliated Ute* Presumption Also Satisfies Predominance.

Reliance can also be presumed under *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-54 (1972). A central focus here is Navient's omission of the truth about its loans, forbearance practices, and borrowing capacity. Thus, "the allegedly actionable statements 'most central' to Plaintiff's fraud allegations are those that . . . omit to state that [Navient's] poor performance in fact derived from reckless . . . practices." *In re Dynex Capital, Inc. Sec. Litig.*, 2011 WL 781215, at *7 (S.D.N.Y. Mar. 7, 2011). Defendants do not distinguish *Dynex*, and instead cite inapposite cases. For example, *Johnston v. HBO Film Mgmt., Inc.* declined to apply *Affiliated Ute* because, unlike here, the purported omission was "meaningless" without the affirmative misrepresentation, *i.e.*, that a movie star "would produce movies." 265 F.3d 178, 193 (3d Cir. 2001).[5] Defendants wrongly claim that the SAC and its appendix primarily concern "affirmative misrepresentations." Op. 19. In reality, both are replete with allegations of "undisclosed" practices (*e.g.,* ¶4) and "failure[s]" to "apprise of" or "disclose" the truth (*e.g.,* ¶13; App'x at 85)—which is exactly what the *Johnston* court said would qualify for the *Affiliated Ute* presumption. 265 F.3d at 192.

CONCLUSION

Plaintiffs respectfully request that the relief requested in the Motion be granted in full.

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[5] Defendants' other authorities fare no better. For example, *Fisker* and *Schwab* were motions to dismiss, not Rule 23 certification motions. *In re Fisker Auto. Holdings, Inc. S'holder Litig.*, 128 F. Supp. 3d 814 (D. Del. 2015); *Schwab v. E*Trade Fin. Corp.*, 285 F. Supp. 3d 745, 753 (S.D.N.Y. 2018). *Goodman v. Genworth Fin. Wealth Mgmt.* concerned omissions that, unlike here, were "merely the inverse" of the misrepresentations. 300 F.R.D. 90 (E.D.N.Y. 2014).

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By: */s/ Joel Friedlander*

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