STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

IN RE HUNTINGTON BANCSHARES INCORPORATED SHAREHOLDER LITIGATION

Lead Case No. 23-012420-CB

Hon. Annette J. Berry

THIS DOCUMENT RELATES TO:
All actions

OPINION AND ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this: 2/28/2025

PRESENT: Honorable Annette J. Berry
Circuit Judge

This civil matter is before Court on a motion for summary disposition filed by Defendant Huntington Bancshares Incorporated ("HBI"). Also, before the Court is a motion for summary disposition filed by Defendants Defendants Stephen D. Steinour, Gary Torgow, Zachary J. Wasserman, Nancy E. Maloney, Lizabeth Ardisana, Alanna Y. Cotton, Ann B. Crane, Robert S. Cubbin, Steven G. Elliott, J. Michael Hochschwender, John C. Inglis, Katherine M.A. Kline, Richard W. Neu, Kenneth J. Phelan, and David L. Porteous (collectively, the "Individual Defendants"). For the reasons stated below, the Court grants the motions.

I. BACKGROUND

In December 2020, HBI and TCF Financial Corporation ("TCF") announced their intent to merge. HBI agreed to provide TCF shareholders with 3.0028 shares of HBI stock for each share

of TCF stock." HBI filed an amended Registration Statement with the SEC on February 12, 2021 to register the necessary HBI shares. The SEC declared it effective on February 17, 2021, and the merger closed in June 2021.

Two class action lawsuits were filed in connection with the merger against the same defendants.[1] Pursuant to the Court's order on November 11, 2023, the cases were consolidated and Plaintiffs filed an amended consolidated complaint.

Plaintiffs claim that HBI violated §11, §12(a)(2), and §15 [2] of the Securities Act of 1933, 15 USC § 77a, *et seq* ("the Act"), by providing false and misleading information in the S-4 statement and the 424B3 prospectus, which are the Offering Materials for the merger. According to Plaintiffs, "[i]n the Merger Exchange, Defendants solicited and sold directly to former TCF shareholders approximately 458 million newly issued shares of Huntington common stock. According to Plaintiffs, all these new shares of Huntington common stock were registered, issued, and solicited directly to Plaintiffs and other former TCF shareholders pursuant to the Offering Materials." [Amended Complaint, ¶ 3].

Plaintiffs claim that the Individual Defendants, the directors, officers, and executives, failed to ensure that Plaintiffs and other former TCF investors were provided complete and accurate information. They contend that Defendants violated three federal regulations in connection with the Offering Materials. The regulations are 17 CFR § 229.305 (Item 305), 17 CFR § 229.303 (Item 303), and 17 CFR § 229.105 (Item 105). Item 305 concerns Quantitative and Qualitative Disclosures about Market Risk in the Registration Statement. Item 303 is

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[1] *Defoe v Huntington Bancshares , Incorporated, et al*, Case No. 23-012420-CB ("the *Defoe* case") and *Arnoys v Huntington Bancshares, Incorporated, et al*, Case No. 23-012955-CB ("the *Arnoys* case").

[2] Section 11 is formally referred to as 15 USC § 77k. Section 12(a)(2 is formally referred to as 15 USC § 77*l*. Section 15 is formally referred to as 15 USC § 77o.

Management's Discussion and Analysis of Financial Condition and Results of Operations, which requires a discussion of and disclosure of any known events, trends, or uncertainties. Finally, Item 105 requires a discussion of the most significant risk factors of the merger's offering.

Plaintiffs' amended complaint includes three claims: (1) violation § 11 of the Securities Act against all Defendants; (2) violation of § 12(a)(2) of the Securities Act against all Defendants; and (3) violation of § 15 of the Securities Act against all Defendants.[3]

In their 138-page amended complaint, Plaintiffs give a comprehensive history of market conditions and provide numerous public statements made by the Federal Reserve and in various new articles. Much of the amended complaint is devoted to Defendants' failure to accurately model the risk of interest rate increases. Namely, they claim Defendants should not have limited their interest rate stress tests to 200 basis point increases, but instead should have modeled for more significant 300 to 400 basis point increases.[4] In addition, Plaintiffs assert that HBI's financial statements incorporated into the Offering Materials violated the Generally Accepted Accounting Principles ("GAAP") " in numerous respects." [Amended Complaint, ¶ 146].

Section 11 of the Act provides that issuers, underwriters, officers and directors of the issuer, and any other expert who helped prepare the registration statement are strictly liable for any misrepresentation or omission of material information in their registration statement. *Omnicare,*

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[3] Plaintiffs also seek class certification.

[4] The parties use the term "bps" in reference to the modeling used by HBI. "Basis points are typically expressed with the abbreviations 'bp,' 'bps,' or 'bips.'"

- A basis point is a standard measure for interest rates and other percentages in finance.
- One basis point equals 1/100th of 1%, or 0.01% (and .0001 in decimal form).
- The word basis comes from the base move between two percentages, or the spread between two interest rates.

https://www.investopedia.com/terms/b/basispoint.asp, accessed February 5, 2025.

Inc v Laborers Dist Council Const Indus Pension Fund, 575 US 175, 179; 135 S Ct 1318; 191 L Ed 2d 253 (2015). A plaintiff must only show that the registration statement contained a material misstatement or omission. *Id.*

Section 12(a)(2) of the Act creates liability for any person who offers or sells a security through a prospectus or an oral communication containing a material misstatement or omission. *In re Morgan Stanley Info Fund Sec Litig*, 592 F3d 347, 359 (CA 2, 2010); *Miller v Thane Int'l, Inc*, 519 F 3d 879, 885 (9th Cir 2008).

Section 15 provides that persons in control are liable for violations of the Act. It states in pertinent part:

> Every person who… controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge …to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.
>
> 15 USC § 77o(a).

There are two elements to a claim under the Securities Act for "controlling-person" liability. First, another person must have violated the provisions of the Securities Act governing false or misleading representations or omissions in a registration statement, prospectus, or oral communication. Second, the defendant had actual power or control over that person. *Wang v Zymergen Inc*, __F Supp 3d __; 2024 WL 3811844 (ND Cal, August 14, 2024).

As to Plaintiffs' alleged violations of the Act, now before the Court is HBI's motion for summary disposition and the Individual Defendants' motion for summary disposition. The motions will be addressed separately below.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Defendants base their motions on MCR 2.116(C)(8). MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). The trial court may consider only the pleadings in rendering its decision. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004)." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

It should be noted that under MCR 2.116(C)(8), a plaintiff need not demonstrate or show proof of an allegation but must allege facts supporting his claims. Under MCR 2.111(B), a "complaint, counterclaim, cross-claim, or third-party complaint must contain… a statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend…" [Emphasis added]. The court in *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369, 375 (1992) explained the purpose of this rule:

> This rule is designed to avoid two opposite, but equivalent, evils. At one extreme lies the straightjacket of ancient forms of action. Courts would summarily dismiss suits when plaintiffs could not fit the facts into these abstract conceptual packages. At the other extreme lies ambiguous and uninformative pleading. Leaving a defendant to guess upon what grounds plaintiff believes recovery is justified violates basic notions of fair play and substantial justice. Extreme formalism and extreme ambiguity interfere equivalently with the ability of the judicial system to resolve a dispute on the merits. The former leads to dismissal of potentially meritorious claims while the

> latter undermines a defendant's opportunity to present a defense. Neither is acceptable.
>
> [Footnote and citation omitted].

In other words, one must plead facts sufficient to inform a defendant of the cause of action, which includes making statements of fact that support the elements of a particular cause of action. A complaint will be subject to dismissal if it amounts to "no more than conclusions and generalities unsupported by any statement of facts … upon which allegations were based." *State ex rel Reading v WU Tel Co*, 336 Mich 84, 90; 57 NW2d 537 (1953).

Furthermore, in ruling on a motion to dismiss, a court may consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case. *Pension Trust Fund for Operating Engineers v Mortgage Asset Securitization, Inc*, 730 F3d 263, 271 (2013).

III. DISCUSSION

A. HBI's Motion

In support of its motion, HBI offers four arguments: (1) Plaintiffs have failed to identify any false or misleading statements, or omissions in the Offering Materials; (2) Defendants are protected by the "safe harbor" provision in the Private Securities Litigation Reform Act ("PSLRA"), 15 USC § 77z-2; (3) Plaintiffs cannot establish causation and their claims are foreclosed by negative causation; and (4) Plaintiffs' claims are barred by the statute of limitations.

"The Securities Act of 1933 (1933 Act), 48 Stat. 74, as amended, 15 USC. s 77a *et seq.*, was designed to provide investors with full disclosure of material information concerning public offerings of securities in commerce, to protect investors against fraud and, through the imposition of specified civil liabilities, to promote ethical standards of honesty and fair dealing." *Ernst & Ernst v Hochfelder*, 425 US 185, 195; 96 S Ct 1375; 47 L Ed 2d 668 (1976). The Securities

Act requires companies to make full and fair disclosures of information connected to a public offering. Securities Act of 1933 §§ 11, 12, 15; USC §§ 77k, 77*l*. *Kolominsky v Root, Inc.*, 100 F 4th 675, 684 (2024).[5] This Court must look to federal case law for guidance pursuant to 15 USC § 77r. [6]

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[5] As to damages, 15 US § 77k(e) provides in part:

> The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided,* That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable.

[6] 15 USC § 77r provides in pertinent part:

> Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—
>
> (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—
>
> (A) is a covered security; or
>
> (B) will be a covered security upon completion of the transaction;
>
> 15 USC § 77r (a)(1) [Emphasis added].

A "covered security" is defined in part as follows:

> (1) Exclusive Federal registration of nationally traded securities
>
> A security is a covered security if such security is—
>
> (A) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

1. False or Misleading Statements or Omissions

HBI first argues that Plaintiffs have failed to identify any false or misleading statements, or omissions in the Offering Materials. In response, Plaintiffs contend that they adequately assert false or misleading statements or omissions in the following:

> Mischaracterization and ineffectiveness of Huntington's risk management practices and internal controls over financial reporting in paragraphs 6, 46, 46-63, 72, 77-105, 106-108, 138-144, and 167-183;
>
> Failure to disclose qualitative and quantitative information related to market risk in violation of Item 305 in paragraphs 8, 184-190, and 191-205;
>
> Failure to disclose and quantify known material events and uncertainties in violation of Item 303 in paragraphs 9, 184-190, and 206-217;
>
> Failure to disclose and accurately describe significant risk factors pursuant to Item 105 in paragraphs 10, 184- 190, and 218-225; and
>
> Huntington's noncompliance with GAAP and consequently inaccurate and incomplete financial statements in paragraphs 4-6, 44, 106-110, and 146-166 their amended complaint.

Much of Plaintiffs' amended complaint is devoted to HBI's modeling of interest rate stress tests of 200 basis point increases. In fact, this is addressed in at least 43 paragraphs in Plaintiffs' amended complaint.

Under Section 11(a) of the Securities Act of 1933, a buyer of securities has a right of action against an issuer or designated individuals for an untrue statement of material fact or omission of a material fact in a registration statement for a public offering. 15 USC § 77k(a). *California Pub*

> (B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).
>
> 15 USC § 77r (b)(1).

Employees' Ret Sys v ANZ Sec, Inc, 582 US 497; 137 S Ct 2042; 198 L Ed 2d 584 (2017); *Omnicare, Inc v Laborers Dist Council Const Indus Pension Fund*, 575 US 175, 179; 135 S Ct 1318; 191 L Ed 2d 253 (2015).

"[A] sincere statement of pure opinion, in a registration statement for a public offering of securities, is not an 'untrue statement of material fact,'" as basis for liability to investors under § 11 of the Securities Act of 1933, "regardless of whether an investor can ultimately prove the belief wrong. That clause, limited as it is to factual statements, does not allow investors to second-guess inherently subjective and uncertain assessments." *Id* at 186. "[W]hether a statement is 'misleading' depends on the perspective of a reasonable investor: The inquiry (like the one into materiality) is objective." *Id* at 186–187. Finally, "if a registration statement omits material facts about the issuer's inquiry into or knowledge concerning a statement of opinion, and if those facts conflict with what a reasonable investor would take from the statement itself, then § 11's omissions clause creates liability." *Id* at 189. "[W]e must bear in mind that a fact is material where there is "a substantial likelihood that" its disclosure 'would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.'" *In re Ariad Pharm., Inc Sec Litig*, 842 F3d 744, 750 (CA 1, 2016), quoting *Basic Inc v Levinson,* 485 US 224, 231–232, 108 S Ct 978, 99 L Ed2d 194 (1988).

As noted above, there are three federal regulations at issue here with respect to the Offering Materials. The regulations are 17 CFR § 229.305 (Item 305), 17 CFR § 229.303 (Item 303), and 17 CFR § 229.105 (Item 105).

Item 305 provides in pertinent part:

> (a) Quantitative information about market risk.
> (1) …A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about

market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. …The three disclosure alternatives are:

(i)(A)(1) Tabular presentation of information related to market risk sensitive instruments; such information shall include fair values of the market risk sensitive instruments… or

(ii)(A) Sensitivity analysis disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices over a selected period of time. The magnitude of selected hypothetical changes in rates or prices may differ among and within market risk exposure categories…or

(iii)(A) Value at risk disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices…

(b) Qualitative information about market risk.

(1) To the extent material, describe:

(i) The registrant's primary market risk exposures;

(ii) How those exposures are managed. Such descriptions shall include, but not be limited to, a discussion of the objectives, general strategies, and instruments, if any, used to manage those exposures; and

(iii) Changes in either the registrant's primary market risk exposures or how those exposures are managed, when compared to what was in effect during the most recently completed fiscal year and what is known or expected to be in effect in future reporting periods.

(2) Qualitative information about market risk shall be presented separately for market risk sensitive instruments entered into for

> trading purposes and those entered into for purposes other than trading.
>
> …
>
> (d) Safe harbor.
>
> (1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z– 2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) ("statutory safe harbors") shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (a), (b), and (c) of this Item 305
>
> (2) For purposes of paragraph (d) of this Item 305 only:
>
> (i) All information required by paragraphs (a), (b)(1)(i), (b)(1)(iii), and (c) of this Item 305 is considered forward looking statements for purposes of the statutory safe harbors, except for historical facts such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and
>
> (ii) With respect to paragraph (a) of this Item 305, the meaningful cautionary statements prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 305.
>
> [Emphasis added].

Thus, pursuant to Item 305, a registrant must primarily identify and quantify potential risks. Forward looking statements are covered by 15 USC 77z– 2, the "safe harbor" provision.

HBI engaged Goldman Sachs as its financial advisor to issue an opinion as to the merger while TCF engaged Keefe, Bruyette & Woods, Inc.to also provide an opinion regarding the merger. HBI incorporated into the Registration Statement its 10-K for 2019 and prospectively incorporated the 10-K for 2020, which was filed a few days after the effective date of the Registration Statement, but before the merger. The two 10-Ks are similar.

In its 10-K statement, HBI included the following risk statements relevant to the instant case:

> **Market Risks:**
>
> - Changes in interest rates could reduce our net interest income, reduce transactional income, and negatively impact the value of our loans, securities, and other assets. This could have an adverse impact on our cash flows, financial condition, results of operations, and capital.
>
> - Uncertainty about the future of LIBOR may adversely affect our business.
>
> [HBI's Motion, Exhibit 3, p 24].
>
> **Market Risk:**
>
> Market risk refers to potential losses arising from changes in interest rates, foreign exchange rates, equity prices and commodity prices, including the correlation among these factors and their volatility. When the value of an instrument is tied to such external factors, the holder faces market risk. …
>
> Huntington measures market risk exposure via financial simulation models, …
>
> … The market forward reflects the market consensus regarding the future level and slope of the yield curve across a range of tenor points. The standard set of interest rate scenarios includes two types: "shock" scenarios which are instantaneous parallel rate shifts, and "ramp" scenarios where the parallel shift is applied gradually over the first 12 months of the forecast on a pro rata basis. …
>
> Our NII (Net Interest Income) at Risk is within our Board of Directors' policy limits for the -25, +100 and +200 basis point scenarios. The NII at Risk shows that our balance sheet is asset sensitive at both December 31, 2020, and December 31, 2019.
>
> The increase in sensitivity was driven by the impact of lower forecast rates on non-maturity deposits resulting in slower balance runoff and higher securities prepayments in the implied forward scenario resulting in more opportunity for reinvestment at higher rates in rising rate environments.

The EVE (Economic Value of Equity) results included in the table above reflect the analysis used monthly by management. It models immediate -25, +100 and +200 basis point parallel shifts ("shocks" as defined above) in market interest rates. With the continued decline in rates, the down 100 basis point shock scenario can produce a distorted view of interest rate risks metrics. As a result, the down 100 basis point shock scenario was replaced with the down 25 basis point shock scenario by the Board as a policy metric beginning September 30, 2020. Management does consider additional scenarios with forecasted negative market rates to understand the impact on EVE.

Liquidity Risk

Liquidity risk is the possibility of us being unable to meet current and future financial obligations in a timely manner. Liquidity is managed to ensure stable, reliable, and cost-effective sources of funds to satisfy demand for credit, deposit withdrawals and investment opportunities. We consider core earnings, strong capital ratios, and credit quality essential for maintaining high credit ratings, which allows us cost-effective access to market-based liquidity. We rely on a large, stable core deposit base and a diversified base of wholesale funding sources to manage liquidity risk.

Operational Risk

Operational risk is the risk of loss due to human error, third-party performance failures, inadequate or failed internal systems and controls, including the use of financial or other quantitative methodologies that may not adequately predict future results; violations of, or noncompliance with, laws, rules, regulations, prescribed practices, or ethical standards; and external influences such as market conditions, fraudulent activities, disasters, failed business contingency plans, and security risks. We continuously strive to strengthen our system of internal controls to ensure compliance with laws, rules, and regulations, and to improve the oversight of our operational risk. We actively monitor cyberattacks such as attempts related to online deception and loss of sensitive customer data.

Compliance Risk

Financial institutions are subject to many laws, rules, and regulations at both the federal and state levels. … Our colleagues receive training for several broad-based laws and regulations

including, but not limited to, anti-money laundering and customer privacy.

Capital

… Both regulatory capital and shareholders' equity are managed at the Bank and on a consolidated basis. We have an active program for managing capital and maintain a comprehensive process for assessing the Company's overall capital adequacy. We believe our current levels of both regulatory capital and shareholders' equity are adequate.

ADDITIONAL DISCLOSURES

Forward-Looking Statements

This report, including MD&A, contains certain forward-looking statements, including, but not limited to, certain plans, expectations, goals, projections, and statements, which are not historical facts and are subject to numerous assumptions, risks, and uncertainties. Statements that do not describe historical or current facts, including statements about beliefs and expectations, are forward-looking statements. Forward-Looking statements may be identified by words such as expect, anticipate, believe, intend, estimate, plan, target, goal, or similar expressions, or future or conditional verbs such as will, may, might, should, would, could, or similar variations. The forward-looking statements are intended to be subject to the safe harbor provided by Section 27A of the Securities Act of 1933,

[HBI's Motion, Exhibit 3, pp 74-84] [Emphasis added].

HBI argues that its modeling proved to be correct. Plaintiffs acknowledge that interest rates did not beginning to rise until at least a year after HBI's modeling period. From June 2020 to January 2022, the Federal Reserve stated that it did not anticipate a rise in interest rates. The Federal Reserve began raising rates on March 16, 2022. As Exhibit 4 of HBI's motion shows, the Federal Reserve raised rates several times from March 2022 to February 1, 2023. The Federal Reserve increased rates more than 200 bps on July 27, 2022.

After the merger closed and after the Federal Reserve began announcing rate increases, HBI's stock rose from $12.88 per share to $15.18 per share on March 6, 2023.[7] Thus, there is no negative impact from the statements made by HBI in its Offering Materials in 2020, particularly in light of the fact that it complied with the requirements of Item 305 and in light of the fact that its stock price rose after interest rates began to rise. Therefore, with respect to Item 305, Plaintiffs have failed to state a claim for which relief can be granted. MCR 2.116(C)(8).

As to Item 303, HBI argues that "Plaintiffs cannot fault HBI for not warning of a rate increase that *did not occur* during the time period covered by the disclosures." [HBI's Motion, p. 16] [Emphasis in original]. In response, Plaintiffs assert that Defendants had the burden to either rule out or disclose any reasonable likelihood of material impact from trends or risks, even if such material impact was uncertain." The Court disagrees.

15 USC §§ 77k and 77*l* require issuers to file informational statements. These statements include management's discussion and analysis ("MD&A") in which the issuer must furnish the information required by Item 303 of Regulation S-K.

"Under Item 303, a company must '[d]escribe any known trends or uncertainties that ... are reasonably likely to have a material ... unfavorable impact on ... revenues or income from continuing operations.' 17 CFR § 229.303(a)(2)(ii). 'The discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results

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[7] As noted above, the Court may consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case. *Pension Trust Fund for Operating Engineers v Mortgage Asset Securitization, Inc*, 730 F3d 263, 271 (2013). Stock prices and announcements from the Federal Reserve among other news reports can be part of the public record.

or of future financial condition.' 17 CFR § 229.303(a)." *Kolominsky v Root, Inc*, 100 F4th 675, 685, fn 4 (CA 6, 2024).

"To plausibly plead such a failure to disclose claim, a complaint must allege (1) that a registrant knew about an uncertainty before an offering; (2) that the known uncertainty is 'reasonably likely to have material effects on the registrant's financial condition or results of operation;' and (3) that the offering documents failed to disclose the known uncertainty." *Silverstrand Investments v AMAG Pharm, Inc*, 707 F3d 95, 103 (CA 1, 2013), citing Mgmt's Discussion and Analysis of Fin Conditions and Results of Operations, SEC Release No. 6835, 1989 WL 1092885, at *4.

Plaintiffs contend that the Offering Materials failed to disclose "numerous modeling and accounting defects [that had] already permeated and crippled Huntington's financial statements, purported GAAP compliance and risk disclosures before the Merger." [Plaintiffs' Response, p. 26, quoting Amended Complaint, ¶ 214]. They argue that HBI's own internal practices and models were grossly deficient. They assert that HBI "knew" that the internally developed and implemented accounting and risk management models and policies in its own financial statements before the merger were deficient.

In the Court's view, Plaintiffs conflate the rise of interests and HBI's interest rate stress test model into a purported noncompliance of GAAP. In addition, Plaintiffs fail to specify which accounting practices were noncompliant. Regarding GAAP, Plaintiffs allege the following:

> Defendants used valuation interest rate risk models that were not appropriate under the circumstances and that ignored observable inputs appropriately valuing interest rate risk. ASC 820-10-35-24 ("reporting entity shall use valuation techniques that are appropriate in the circumstances . . . maximizing the use of observable inputs"). Also in violation of GAAP, Huntington failed to include appropriate risk adjustments as part of its interest rate risk exposure assessments. ASC 820-10-35-54E ("reporting entity shall include appropriate risk

> adjustments"); ASC 820-10-55-8 ("fair value measurement should include a risk premium reflecting . . . the uncertainty inherent in cash flows").

These allegations harken back to Plaintiffs' claim that the interest rate stress testing was inadequate. As Defendants have demonstrated, only three out of fifty other financial institutions used a modeling stress test in excess of 200 bps for the 2019 and 2020 years. [HBI's Motion, Exhibit 1]. There is no allegation HBI had actual knowledge of other such particular purported trend. HBI warned of the possibility of a rise in interest rates. Again, HBI is not obligated to know the unknowable.

HBI also demonstrates that the offering documents contained "on-point disclosures." For example, one such statement was: "Any failure to maintain an effective internal control environment could impact our ability to report our financial results on an accurate and timely basis, which could result in . . . an adverse impact on our business and stock price." [Defendants' Omnibus Reply, p. 9].

Indeed, Plaintiffs point to HBI's financial statements claiming they were not complete, neutral, nor free from error because the HBI failed to account for and disclose the true extent and severity of the interest rate risk and only modeled a maximum 200 basis point rate increase. As HBI argues, the modeling was correct until March 6, 2023 when the Federal Reserve began raising interest rates. This was almost two years after the merger closed. As to HBI's accounting practices, Plaintiffs have failed to identify any faulty accounting practices, processes, or figures. "A Court 'is not required to speculate on which portions of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim.'" *Auto Components Holdings, LLC v Konal Engg & Equip, Inc*, No. 12-10762, 2013 WL 2242451, at *3 (ED Mich, May 21, 2013), quoting *InterRoyal Corp v*

Sponseller, 889 F 2d 108, 111 (6th Cir.1989). Furthermore, because the allegations are so general, "the allegations are insufficient to determine whether this constituted a GAAP violation because the complaint does not provide any factual allegations concerning the financial impact of these practices." *Davis v SPSS, Inc*, 385 F Supp 2d 697, 709 (ND Ill, 2005).

The next purported violation concerns Item 105. Item 105 provides in relevant part:

> (a) Where appropriate, provide under the caption "Risk Factors" a discussion of the material factors that make an investment in the registrant or offering speculative or risky. This discussion must be organized logically with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk. …
>
> (b) Concisely explain how each risk affects the registrant or the securities being offered. … If the risk factor discussion is included in a registration statement, it must immediately follow the summary section required by § 229.503 (Item 503 of Regulation S–K). … Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§ 230.430A of this chapter).

As indicated above, HBI fully complied with the requirements of Item 105. Each risk factor was identified and discussed in an organized manner. Each risk factor followed the summary section. Thus, HBI has not violated the Item 105 regulation.

To summarize, HBI's Offering Materials fully complied with Securities Act of 1933 and its accompanying regulations. HBI cannot be faulted for unanticipated increases in interest rates occurring nearly two years after the merger closing. Nor were there any alleged "known uncertainties" to disclose. *Kolominsky, supra; Silverstrand Investments, supra.* The only known uncertainty is the possible fluctuation of interest rates, known only to the Federal Reserve, which disclosed its intentions in various monthly bulletins. Any reasonable investor would know that interest rates could rise or fall. Investors may not "second-guess inherently subjective and

uncertain assessments." *Omnicare, supra* at 186. No facts could "conflict with what a reasonable investor would take from the statement itself." *Id* at 189. A failure to predict rise in interest rates in prospectus does not constitute fraud and cannot be basis for alleging misrepresentations or omissions of fact in securities action. Securities Act of 1933. *Sheppard v TCW/DW Term Trust 2000*, 938 F Supp 171, 178 (1996). As Judge Kumar stated in *In re Home Point Capital Inc Sec Litig*, No. 21-11457, 2022 WL 18932069, at *4 (ED Mich, October 5, 2022), citing *In re Omnicare, Inc Securities Litigation*, 769 F 3d 455; 471-472 (6th Cir. 2014) (materiality requirement is not designed to attribute child-like simplicity to investors), HBI "had no obligation to disclose information about interest rate hikes that were unknown and unanticipated by even the Federal Reserve at the time of the" release of the Offering Materials. *Id.* "Nor was [HBI] obligated to provide stronger warnings about the impact rising interest rates would have on its performance; rising interest rates pose an obvious risk to mortgage lenders, which investors could be expected to understand." *Id.* Moreover, Plaintiffs have failed to allege any false statement or omission of material fact where there is "a substantial likelihood that" disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. *In re Ariad Pharm, Inc Sec Litig*, *supra*. Accordingly, Plaintiffs have failed to state claims for violations of the Securities Act of 1933.

2. "Safe Harbor" Protection

HBI next argues that Defendants are protected by the "safe harbor" provision in the Private Securities Litigation Reform Act ("PSLRA"), 15 USC § 77z-2. Notably, there are "safe harbor" provisions in both Item 305 and Item 303.

The "safe harbor" provision of Private Securities Litigation Reform Act (PSLRA) applies to statements that are forward-looking as defined by statute, provided that they are: (1) identified

as such and accompanied by meaningful cautionary statements; or (2) immaterial; or (3) made without actual knowledge that statement was false or misleading." *In re Aetna, Inc Sec Litig*, 617 F3d 272, 278-279 (CA 3, 2010).

A forward-looking statement is defined in pertinent part as follows:

> **(A)** a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;
> **(B)** a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;
> **(C)** a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;
> **(D)** any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);
> …
>
> 15 USC 77z-2 (i)(1).

"[T]he language used in a particular report will determine whether a statement is adequately identified. [The SEC] opines that '[t]he use of linguistic cues like 'we expect' or 'we believe,' when combined with an explanatory description of the company's intention to thereby designate a statement as forward-looking, generally should be sufficient to put the reader on notice that the company is making a forward-looking statement." *Slayton v Am Exp Co*, 604 F3d 758, 769 (CA 2, 2010). See also *Employees' Ret Sys of the City of Baton Rouge & Par of E Baton Rouge v MacroGenics, Inc*, 61 F4th 369, 389 (CA 4, 2023) (Biopharmaceutical company's press release statement concerning clinical trial's interim results pertaining to length of time patients survived without regard to any progression of disease constituted forward-looking statement and statement could not be interpreted as representation of present facts, despite use of "anticipate" and "continue" in present tense, as definition of "anticipate" was forward-looking and term "continue"

was reliant upon company's hope that current positive results would remain as time elapsed.); *Einhorn v Axogen, Inc*, 42 F4th 1218, 1223 (CA 11, 2022) (The key characteristic of a "forward-looking statement," as required for protection from liability under safe-harbor provision, is that its truth or falsity is discernible only after it is made.).

To be shielded from liability under the "safe harbor" provision, the registrant must identify a statement as forward-looking and must accompany the statement "by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement."15 USC 77z-2 (c)(1)A(i),

In the Court's view, HBI provided identified various statements as forward looking and provided adequate "meaningful cautionary" statements. For example, HBI provides a comprehensive list of risks in its "Cautionary Statement Regarding Forward-Looking Statements." [HBI's Motion, Exhibit 2, p.60]. Some of the risks include:

- changes in general economic, political, or industry conditions;
- uncertainty in U.S. fiscal and monetary policy, including the interest rate policies of the Federal Reserve Board;
- volatility and disruptions in global capital and credit markets;
- movements in interest rates;
- competitive pressures on product pricing and services; success, impact, and timing of Huntington's and TCF's business strategies, including market acceptance of any new products or services including those implementing Huntington's "Fair Play" banking philosophy;
- the nature, extent, timing, and results of governmental actions, examinations, reviews, reforms, regulations, and interpretations, including those related to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the Basel HI regulatory reforms, as well as

those involving the OCC, Federal Reserve Board, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau;

- changes in legislation, regulation, policies or administrative practices, Whether by judicial, governmental or legislative action and other changes pertaining to banking, securities, taxation and financial accounting and reporting…;

- delays in completing the merger;

- the failure to obtain shareholder approvals or to satisfy any of the other conditions to the merger on a timely basis or at all;

- the possibility that the merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events …

HBI also cautions:

> You are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this joint proxy statement/prospectus or the dates of the documents incorporated by reference in this joint proxy statement/prospectus. As for the forward-looking statements that relate to future financial results and other projections, actual results will be different due to the inherent uncertainties of estimates, forecasts and projections and may be better or worse than projected and such differences could be material. Given these uncertainties, we caution you not to place reliance on these forward-looking statements. …
>
> [Id, p. 61].

"An accurate statement coupled with the precise disclosure of a risk later realized cannot adequately form the basis for a securities claim." *Panther Partners, Inc v Ikanos Communications, Inc*, 538 F Supp 2d 662, 672 (SDNY, 2008), aff'd 347 Fed Appx 617 (CA 2, 2009). "Furthermore, to be actionable, the representation must be one of existing fact, not merely an expression of opinion, belief or expectation." *In re Initial Pub Offering Sec Litig*, 358 F Supp 2d 189, 210 (SDNY, 2004). In this case, the disclosures regarding interest rates were merely predictive and

based on expectations and opinion. They were accompanied by meaningful warnings and meaningful cautionary statements of the numerous risks to be considered.

For the "safe harbor" provision to be inapplicable, Plaintiffs must allege that any statements made by HBI were knowingly false. 15 USC 77z-2 (c)(1)B(i). If a plaintiff fails to prove that the forward-looking statement was made with actual knowledge by that person that the statement was false or misleading, the "safe harbor" provision protects a defendant from liability. Id. Plaintiffs have not identified or specified any statements that were false or misleading or that they were knowingly false.[8] Accordingly, HBI is shielded from liability under the "safe harbor" provision.

3. Causation

HBI's third argument is that Plaintiffs cannot establish causation and their claims are foreclosed by negative causation. In response, Plaintiffs argue that, because the negative causation is an affirmative defense, HBI has the burden to prove it. As such, it is premature to consider negative causation because it requires expert testimony to demonstrate negative causation, which is inappropriate at the pleading stage in the context of a motion based on MCR 2.116(C)(8). The Court agrees.

"The affirmative defense of negative causation prevents recovery for losses that the defendant proves are not attributable to the alleged misrepresentation or omission in the registration statement." *Hildes v Arthur Andersen LLP*, 734 F3d 854, 860 (CA 9, 2013). The defendant has the burden of proof on the defense of negative causation under the Securities Act, and bears a heavy burden to show that the depreciation in value of a plaintiff's stock resulted from

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[8] "When fraud pleadings under § 10(b) of the Exchange Act employ the same facts as claims for a false or misleading statement or omission in a registration statement, prospectus, or oral communication under the Securities Act, a court can assume that the complaint sounds in fraud, such that the heightened pleading standard for fraud claims applies." Securities Act of 1933 §§ 11, 12, 15. *Kolominsky v Root, Inc*, 100 F 4th 675, 683 (2024).

factors other than the alleged material misstatement. *Id*; Securities Act of 1933, § 11(a, e), 15 USC § 77k(a, e)."Overcoming a negative causation defense requires merely that 'the misrepresentation *touches upon* the *reasons* for an investment's decline in value.'" *Id* at 861 (CA 9, 2013), quoting *In re Worlds of Wonder Sec Litig,* 35 F3d 1407, 1422 (CA 9, 1994). Finally, "[w]hile a defendant may be able to prove this 'negative causation' theory, an affirmative defense may not be used to dismiss a plaintiff's complaint under Rule 12(b)(6)."[9] *In re Adams Golf, Inc Sec Litig*, 381 F3d 267, 277 (CA 3, 2004) [Citation omitted]. Accordingly, HBI's argument regarding "negative causation" cannot be resolved by the Court at this time. Nevertheless, Plaintiffs have failed to identify any false or misleading statements, or omissions in the Offering Materials and Defendants are protected by the "safe harbor" provision. Thus, Plaintiffs have failed to state claims based on false or misleading statements or omissions in the Offering Materials.

4. Statute of Limitations

HBI's final argument is that Plaintiffs' claims are barred by the statute of limitations. Conversely, Plaintiffs contend that their claims are timely and that HBI misstates the law. They claim that the statute of limitations is an affirmative defense, which they are not required to negate in the complaint.

15 USC § 77m provides:

> No action shall be maintained to enforce any liability created under section 77k or 77*l*(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77*l*(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77*l*(a)(1) of this title more than three years after the security was

[9] FRCP 12(b)(6) provides the same ground for dismissal as MCR 2.116(C)(8), i.e., "failure to state a claim upon which relief may be granted."

> bona fide offered to the public, or under section 77*l*(a)(2) of this title more than three years after the sale.
>
> [Emphasis added].

Hence, under the Securities Act of 1933, a private investor pursuing a claim for violation of sections of the Act governing registration statements, prospectuses, and communications must ordinarily bring suit within one year after discovering a violation, and within three years after the security was offered or sold. *National Credit Union Administration Board v RBS Securities, Inc*, 833 F 3d 1125, 1129 (2016).

The Securities Act's three-year time bar for bringing an action based on material misstatements or omissions in a registration statement is a statute of repose. *California Pub Employees' Ret Sys v ANZ Sec, Inc*, 582 US 497, 505; 137 S Ct 2042; 198 L Ed 2d 584 (2017). Statutes of repose begin to run on the date of the last culpable act or omission of the defendant. *Id.* Statutes of repose are not subject to tolling. *Id* at 508, 516.[10]

Plaintiffs' original complaint in the first of these two consolidated cases (the *Defoe* case) was filed on September 26, 2023. The second case (the *Arnoys* case) was filed on October 6, 2023. The Offering Materials were submitted on February 12, 2021. The merger closed on June 9, 2021.

Arguably, the last culpable act or omission, *Id,* occurred on February 12, 2021. Therefore, Plaintiffs' original complaints are timely under the three-year statute of repose. Moreover, they could not have known, "by the exercise of reasonable diligence," that the 200- bps interest rate stress test and internal practices were deficient until the Federal Reserve began raising interest

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[10] The court in *California Pub Employees' Ret Sys v ANZ Sec, Inc*, 582 US 497, 516; 137 S Ct 2042; 198 L Ed 2d 584 (2017) held:

> The statute displaces the traditional power of courts to modify statutory time limits in the name of equity. Because the *American Pipe* tolling rule is rooted in those equitable powers, it cannot extend the 3– year period. Petitioner's untimely filing of its individual action is ground for dismissal.

rates in March 2022. The complaint was filed more than a year after the first rise in interest rates. However, the complaint was timely under the 3-year statute of repose. Therefore, HBI's argument regarding Plaintiffs' untimely complaint is without merit. Even so, as indicated above, Plaintiffs have failed to state claims for violations of the Securities Act and its various regulations. MCR 2.116(C)(8). Accordingly, the Court grants HBI's motion

B. The Individual Defendants' Motion

The second motion before the Court is the Individual Defendants' motion. As noted above, the Individual Defendants' motion is based on MCR 2.116 (C)(8). Also, as indicated above, Plaintiffs have asserted claims under §§ 11, 12(a)(2), and 15 of the Securities Act of 1933. The Individual Defendants assert that the arguments made in HBI's motion applies equally to the Individual Defendants. Only three of the Individual Defendants were officers or employees of HBI. They are:

> Stephen D. Steinour (President, Chief Executive Officer ("CEO"), and Chairman of the Board of Directors of HBI);
>
> Zachary J. Wasserman (Chief Financial Officer of HBI); and
>
> Nancy E. Maloney (Controller of HBI).

The other defendants served on the Board of Directors. They were business people from outside businesses who independently served on the Board. They are:

> Lizabeth Ardisana (CEO 0f ASG Renaissance, LLC);
>
> Alanna Y. Cotton (former Senior Vice President and General Manager, Product Marketing for Samsung Electronics America, Inc);
>
> Ann B. Crane (President and CEO of Crane Group Company);
>
> Robert S. Cubbin (retired President and CEO of Meadowbrook Insurance Group);

Steven G. Elliott (retired Senior Vice Chairman of Bank of New York Mellon);

J. Michael Hochschwender (President and CEO of The Smithers Group);

John C. Inglis (Distinguished Visiting Professor of Cyber Studies at the United States Naval Academy);

Katherine M.A. Kline (former Chief Marketing and Communications Officer of Verizon Media);

Richard W. Neu (retired Chairman of MCG Capital Corporation);

Kenneth J. Phelan (Senior Advisor for Oliver Wyman, Inc, and retired Chief Risk Officer of the United States Department of the Treasury); and

David L. Porteus (attorney With McCurdy, Wotila & Porteous, PC).

According to Plaintiffs' amended complaint, the remaining defendant, Gary Torgow, was the Executive Chairman of the Board of Directors for TCF. He had no affiliation with HBI at the time that the Registration Statement was filed and that the merger closed.

In support of their motion, the Individual Defendants present that the §12(a)(2) claim fails because the Individual Defendants were not statutory sellers, that the §15 claim fails because Plaintiffs have not alleged an underlying 1933 Act violation and have not alleged the requisite "control," and that the § 11 claim fails as to Defendant Gary Torgow because he is not a proper §11 defendant.

1. <u>Statutory Sellers and the Requisite Control</u>

The Individual Defendants first argue that, under §12(a)(2) (alternatively cited as 15 USC § 77*l*), Plaintiffs' claim fails because these defendants are not considered "sellers." In response, Plaintiffs argue that the Individual Defendants "directly solicited the purchases because they

issued, caused to be issued, or signed or authorized the Offering Materials." [Plaintiffs' Response, p. 43].

§12(a)(2) provides:

> Any person who—
>
> **(2)** offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,
>
> shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.
>
> [Emphasis added].

"In order to determine the status of a 'seller,' '[t]he test is ... whether the defendant either passed title or offered to do so, or solicited an offer.'" *In re F & M Distributors, Inc Sec Litig*, 937 F Supp 647, 657 (ED Mich, 1996), quoting *Smith v Am Nat Bank & Tr. Co*, 982 F2d 936, 942 (CA 6, 1992), citing *Pinter v Dahl,* 486 US 622; 108 S Ct 2063; 100 L Ed 2d 658 (1988).

An officer or director who signs a registration statement containing materially false or misleading statements or omissions is deemed, for pleading purposes, to have solicited a purchase for purposes of satisfying privity requirement for prospectus misrepresentation claim under Securities Act. Securities Act of 1933, § 12(a)(2), 15 U.S.C.A. § 77*l*(a)(2). *In re Flag Telecom*

Holdings, Ltd Sec Litig, 352 F Supp 2d 429, 454 (SDNY, 2005). Individual officers and directors signing the corporation's registration statement were subject to liability under Securities Act, as control persons, for corporation's underlying violations of the Securities Act. *Id* at 457.

Defendants Steinour, Wasserman, and Maloney signed the Registration Statement. However, as Defendants herein argue, HBI did not solicit any TCF shareholders, but instead, TCF made its own recommendations to its own shareholders. Thus, the three officers of HBI could not have been deemed to have solicited TCF shareholders.

Individual directors can be held liable for offering or selling securities issued in conjunction with misleading prospectus if it was shown that directors had met with potential investors, brokers or investment analysts to solicit purchase of securities. *Miller v New Am High Income Fund*, 755 F Supp 1099, 1105 (D Mass, 1991). Plaintiffs make broad non-specific allegations that Defendants prepared the Offering Materials and directly solicited "Plaintiffs and other TCF shareholders to participate in the Merger and thereby acquire newly issued Huntington common stock in the Merger Exchange." Plaintiffs provide nothing more than this broad allegations without specifying who, when, and to whom Defendant solicited. Hence, the allegations that Defendants actively and directly solicited Plaintiffs is insufficient to establish that Defendants were "sellers" under the Securities Act.

Although Plaintiffs need not employ a heightened pleading standard required for fraud, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *In re Cloudera, Inc,* 121 F 4th 1180, 1186 (2024) [Internal quotation marks and citations omitted]. Like Michigan's pleading standard under MCR 2.116(C)(8), one must plead facts sufficient to inform a defendant of the cause of action, which includes making statements of fact that support the elements of a particular cause of

action. A complaint will be subject to dismissal if it amounts to "no more than conclusions and generalities unsupported by any statement of facts … upon which allegations were based." *State ex rel Reading, supra.* Here, Plaintiffs broadly contend that the Individual Defendants made material misstatements and omissions without specifying who said what and when they said it. Again, their claims are merely based on the fact that HBI used an interest rated stress test of 200 bps. Federal Reserve only began raising interest rates almost two years after the merger. Even so, after the merger closed and after the Federal Reserve began announcing rate increases, HBI's stock rose from $12.88 per share to $15.18 per share on March 6, 2023. Plaintiffs' conclusory allegations are insufficient to make a case under § 11. The allegations are no more than generalities and conclusions. *Id.*

Finally, officers and directors who did not sign the corporation's registration statement, and were not shown to have exercised sufficient actual control over the corporation, were not subject to liability as "control" persons under Securities Act, for corporation's primary violations of Act. Securities Act of 1933. *Id.* Other than the three officers who signed the Registration Statement, the other defendants cannot have exercised sufficient actual control. While the three officers who signed the Registration Statement did have actual control over HBI, they made their recommendations to their own shareholders and not to TCF shareholders. Each corporation held their own special meeting to recommend the merger.

2. <u>Proper § 11 Defendants</u>

Section 11 provides that issuers, underwriters, officers and directors of the issuer, and any other expert who helped prepare the registration statement are strictly liable for any misrepresentation or omission of material information in their registration statement. *Omnicare, Inc v Laborers Dist Council Const Indus Pension Fund*, 575 US 175, 179; 135 S Ct 1318; 191 L

Ed 2d 253 (2015). In the Court's view, Mr. Torgow is not an issuer, seller, or director of the issuer under Section 11 because HBI is the issuer of HBI shares. He could not have had control over HBI and had no part in drafting or signing the Offering Materials. Thus, he is not a proper defendant in this scenario. Because Plaintiffs have failed to state a claim under § 15, as officers and directors, none of the Individual Defendants can be held liable for any misstatement or omission. Nor are any of the statements made in the Offering Materials actionable. Accordingly, summary disposition under MCR 2.116(C)(8) is appropriate.

IV. CONCLUSION

Plaintiffs have failed to state a claim for a violation of the Securities Act of 1933 pursuant to §§ 11, 12(a)(2), 15 against HBI. They have also failed to state a claim against the Individual Defendants. Accordingly, the Court grants both motions and need not address Plaintiffs' class certification allegations.

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Defendant Huntington Bancshares Incorporated is hereby **GRANTED;**

IT IS FURTHER ORDERED that the motion for summary disposition filed by Defendants Stephen D. Steinour, Gary Torgow, Zachary J. Wasserman, Nancy E. Maloney, Lizabeth Ardisana, Alanna Y. Cotton, Ann B. Crane, Robert S. Cubbin, Steven G. Elliott, J. Michael Hochschwender, John C. Inglis, Katherine M.A. Kline, Richard W. Neu, Kenneth J. Phelan, and David L. Porteous is hereby GRANTED;

IT IS FURTHER ORDERED that the Amended Complaint filed by Plaintiffs in this consolidated is hereby **DISMISSED;**

IT IS FURTHER ORDERED that this resolves the last pending claim and **CLOSES THE CASE**.

IT IS SO ORDERED.

DATED: 2/28/2025

/s/ Annette J. Berry
February 28, 2025
Circuit Judge