

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SABA CAPITAL MASTER FUND, LTD.,	:	
and SABA CAPITAL MANAGEMENT, L.P.,	:	
	:	
Plaintiffs,	:	1:23-cv-05568-JSR
	:	
v.	:	
	:	
CLEARBRIDGE ENERGY MIDSTREAM	:	
OPPORTUNITY FUND INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
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 [PROPOSED] ORDER GRANTING THE TORTOISE FUND DEFENDANTS' MOTION TO VACATE THE JUDGMENT PURSUANT TO RULE 60(b)

WHEREAS, on June 29, 2023, Plaintiffs Saba Capital Master Fund, Ltd. and Saba Capital Management, L.P. (collectively, "Plaintiffs") filed a Complaint (the "Complaint") in the above-captioned litigation (the "Action") against, among others, Defendants Tortoise Midstream Energy Fund, Inc. ("NTG"), Tortoise Energy Independence Fund, Inc. ("NDP"), Tortoise Pipeline & Energy Fund, Inc. ("TTP"), Tortoise Energy Infrastructure Corp. ("TYG"), and Ecofin Sustainable and Social Impact Term Fund ("TEAF") (collectively, the "Tortoise Funds").¹ Plaintiffs alleged that the Tortoise Funds' resolutions opting into the provisions of the Maryland Control Share

¹ The definitional parenthetical next to the name of each company is that company's ticker symbol on the New York Stock Exchange. Tortoise Energy Infrastructure Corp. ("TYG") is now the only remaining active closed-end investment company fund. Tortoise Midstream Energy Fund, Inc. ("NTG") and Ecofin Sustainable and Social Impact Term Fund ("TEAF") have both since merged into TYG, with TYG as the surviving entity. Tortoise Energy Independence Fund, Inc. ("NDP") and Tortoise Pipeline & Energy Fund, Inc. ("TTP") have been merged into a non-party fund, Tortoise Power and Energy Infrastructure Fund, Inc. ("TPZ"), with TPZ as the surviving entity, and TPZ has been converted to Tortoise Electrification Infrastructure ETF, an actively managed exchange-traded fund.

Acquisition Act violated Section 18(i) of the Investment Company Act of 1940 (the “ICA”), 15 U.S.C. § 80a-18(i), and sought rescission under Section 47(b) of the ICA, 15 U.S.C. § 80a-46(b);

WHEREAS, on January 4, 2024, this Court entered Judgment (Dkt. No. 125) pursuant to its Opinion and Order of the same date (Dkt. No. 124). The Judgment granted summary judgment for Plaintiffs, declared that the control share resolutions at issue violate Section 18(i) of the ICA, and ordered those resolutions rescinded (the “Judgment”);

WHEREAS, in further proceedings in this Action in which the Tortoise Funds did not participate, the Supreme Court held in *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. 608 (2026), that Section 47(b) of the ICA does not create a private cause of action, thereby abrogating *Oxford University Bank v. Lansuppe Feeder, LLC*, 933 F.3d 99 (2d Cir. 2019);

WHEREAS, on July 16, 2026, the United States Court of Appeals for the Second Circuit partially vacated the Judgment and remanded for further proceedings consistent with *FS Credit* as to the defendant funds that were parties to the Supreme Court proceedings. The mandate of the Second Circuit issued on August 11, 2026 (Dkt. No. 143);

WHEREAS, on October ~~5~~⁵, 2026, the Tortoise Funds filed a motion, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, for an Order vacating the Judgment as to the Tortoise Funds (the “Motion”) (Dkt. No. ~~158~~);

WHEREAS, the Tortoise Funds have stated in their Motion that counsel for Plaintiffs has authorized them to represent in the Motion that Plaintiffs take no position on the Motion and will not file an opposition to it; and

WHEREAS, the Court having considered the Motion and Plaintiffs’ no position and no opposition as stated in the Motion;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED by the United States District Court for the Southern District of New York as follows:

1. The Motion is hereby GRANTED.
2. The Judgment entered on January 4, 2024 (Dkt. No. 125) is hereby VACATED as to Defendants Tortoise Midstream Energy Fund, Inc., Tortoise Energy Independence Fund, Inc., Tortoise Pipeline & Energy Fund, Inc., Tortoise Energy Infrastructure Corp., and Ecofin Sustainable and Social Impact Term Fund. This vacatur rests on Rule 60(b) of the Federal Rules of Civil Procedure.
3. The Clerk of Court is directed to close the motion pending at Docket No. 158.

Dated: New York, New York

_____ 10/7, 2026



JED S. RAKOFF
UNITED STATES DISTRICT JUDGE