

the court, as requested by defendant, directed the parties to submit supplemental briefs addressing the amended complaint. The court then issued orders granting defendant's motion to dismiss the original complaint, without reference to the amended complaint or the supplemental briefs.

In the circumstances here, where the record on appeal of the final order permits consideration of a purely legal issue that has been fully briefed by the parties, in the interest of judicial economy, we exercise our discretion to institute the amended complaint as the operative pleading, and consider defendant's motion to dismiss the amended complaint asserting the single claim for aiding and abetting fraud (*see Varo, Inc. v Alvis PLC*, 261 AD2d 262, 267 [1st Dept 1999], *lv denied* 95 NY2d 767 [2000]; *see also S & J Serv. Ctr., Inc. v Commerce Commercial Group, Inc.*, 178 AD3d 977 [2d Dept 2019]).

We find that the amended complaint adequately pleads the elements of aiding and abetting fraud by sufficiently alleging the existence of an underlying fraud, actual knowledge, and substantial assistance (*see William Doyle, Galleries, Inc. v Stettner*, 167 AD3d 501, 503 [1st Dept 2018]).

To the extent defendant raises any issue with the pleading of the underlying fraud, we find that the amended complaint adequately pleads the fraud by alleging, among other things, that nonparty hedge funds, Platinum and Beechwood, fraudulently violated the trust investment restrictions by stuffing the trusts with noninvestment grade assets (some that were controlled by Platinum), misrepresented the quality, value, and risk of the investments, and used trust funds to invest in other entities controlled or owned by Platinum and to prop up Platinum's Ponzi scheme (*see In re Platinum-Beechwood Litig.*, 427 F Supp 3d 395 [SD NY 2019]).

The amended complaint adequately alleges defendant's actual knowledge of the fraud based on allegations of conduct and surrounding circumstances from which its knowledge of the fraud may be inferred, which is all that is required at this pre-discovery stage (see *DDJ Mgt., LLC v Rhone Group L.L.C.*, 78 AD3d 442, 443 [1st Dept 2010]; *Oster v Kirschner*, 77 AD3d 51, 55–56 [1st Dept 2010]). With respect to substantial assistance, the allegations in the amended complaint that defendant provided several ratings in assistance of the perpetuation of the underlying fraud that it knew were false and unwarranted, satisfy the pleading burden as to this element. Finally, we find that the aiding and abetting claim based on allegations that defendant issued credit ratings it knew were false is not barred by the First Amendment.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 20, 2021



Susanna Molina Rojas
Clerk of the Court