

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JB AND MARGARET BLAUGRUND
FOUNDATION,

Plaintiff,

v.

GUGGENHEIM FUNDS INVESTMENT
ADVISORS, LLC, RANDALL C. BARNES,
ANGELA BROCK-KYLE, THOMAS F.
LYDON, JR., RONALD A. NYBERG,
SANDRA G. SPONEM, RONALD E. TOUPIN,
JR., and AMY J. LEE,

Defendants.

C.A. No. 2021-1094-NAC

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
STOCKHOLDER CLASS ACTION, SETTLEMENT HEARING, AND
RIGHT TO APPEAR**

*The Court of Chancery of the State of Delaware authorized this Notice.
This is not a solicitation from a lawyer.*

NOTICE OF PENDENCY OF CLASS ACTION:¹ Please be advised that your rights will be affected by the above-captioned stockholder class action (the “Action”) pending in the Court of Chancery of the State of Delaware (the “Court”) if you were a beneficial holder of common shares of Fiduciary/Claymore Energy Infrastructure Fund (“FMO”) common stock as of the closing of the merger of FMO with Kayne Anderson Energy Infrastructure Fund (“KYN”) on March 7, 2022 (the “Merger”).

NOTICE OF SETTLEMENT: Please also be advised that (i) Plaintiff JB and Margaret Blaugrund Foundation (“Plaintiff”), on behalf of itself and the other members of the Settlement Class (as defined in paragraph 38 below); and (ii) Defendants Guggenheim Funds Investment Advisors, LLC (“GFIA”), Randall C. Barnes, Angela Brock-Kyle, Thomas F. Lydon, Jr., Ronald A. Nyberg, Sandra G. Sponem,

¹ Any capitalized terms not otherwise defined in this Notice shall have the meanings given to them in the Stipulation and Agreement of Settlement, Compromise, and Release entered into by the Parties on March 29, 2024 (the “Stipulation”). A copy of the Stipulation is available at www.FMOSStockholdersLitigation.com.

Ronald E. Toupin, Jr., and Amy J. Lee (collectively, “Defendants”; Plaintiff and Defendants together, the “Parties”) have reached a proposed settlement of the Action for \$18,800,000 in cash (the “Settlement”). The proposed Settlement, if approved by the Court, will resolve all claims in the Action.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. This Notice explains how members of the Settlement Class (as defined in paragraph 38 below) (“Class Members,” and each a “Class Member”) will be affected by the Settlement. The following table provides a brief summary of the rights you have as a Class Member and the relevant deadlines, which are described in more detail later in this Notice.

CLASS MEMBERS’ LEGAL RIGHTS IN THE SETTLEMENT:	
RECEIVE A PAYMENT FROM THE SETTLEMENT. CLASS MEMBERS <u>DO NOT</u> NEED TO SUBMIT A CLAIM FORM.	If you are a member of the Settlement Class, you <u>may</u> be eligible to receive a <i>pro rata</i> distribution from the Settlement proceeds. Eligible Class Members <u>do not</u> need to submit a claim form in order to receive a distribution from the Settlement, if approved by the Court. If you are eligible for a distribution from the Settlement, it will be paid to you directly. <i>See</i> paragraphs 44-54 below for further discussion.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <u>RECEIVED</u> NO LATER THAN JUNE 24, 2024.	If you are a member of the Settlement Class and would like to object to the proposed Settlement, the proposed Plan of Allocation, or Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses, including Plaintiff’s application for an incentive award, you may write to the Court and explain the reasons for your objection.
ATTEND A HEARING ON JULY 9, 2024, AT 1:30 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <u>RECEIVED</u> NO LATER THAN JUNE 24, 2024.	Filing a written objection and notice of intention to appear that is received by June 24, 2024, allows you to speak in Court, at the discretion of the Court, about your objection. In the Court’s discretion, the July 9, 2024 hearing may be conducted by telephone or videoconference (<i>see</i> paragraphs 61-62 below). If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.

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WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to notify Class Members of the existence of the Action and the terms of the proposed Settlement of the Action. The Notice is also being sent to inform Class Members of a hearing that the Court has scheduled to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation for the Settlement proceeds, and the application by Plaintiff’s Counsel—Bernstein Litowitz Berger & Grossmann LLP and Morris Kandinov LLP—for an award of attorneys’ fees and expenses in connection with the Settlement, including Plaintiff’s application for an incentive award (the “Settlement Hearing”). *See* paragraphs 61-62 below for details about the Settlement Hearing, including the date and time of the hearing.

2. The Court directed that this Notice be mailed to you because you may be a member of the Settlement Class. The Court has directed us to send you this Notice because, as a Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how the Action and the proposed Settlement generally affects your legal rights. Please Note: The Court may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

3. The issuance of this Notice is not an expression by the Court of any findings of fact or any opinion concerning the merits of any claim in the Action, and the Court has not yet decided whether to approve the Settlement. If the Court approves the Settlement, then payments to eligible Class Members (*see* paragraphs 44-54 below) will be made after any appeals are resolved.

PLEASE NOTE: Receipt of this Notice does not mean that you are a Class Member or that you will be entitled to receive a payment from the Settlement.

WHAT IS THIS CASE ABOUT?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO THE FOLLOWING MATTERS AND THESE RECITATIONS SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

4. FMO was a closed-end fund that invested primarily in master limited partnerships (“MLPs”) in the energy infrastructure industry.

5. FMO’s operations were managed by its investment adviser, Defendant GFIA, and its subadviser, Tortoise Capital Advisors, LLC (“Tortoise”), and overseen by its board of trustees (the “Trustees”), which included at all relevant times Defendants Randall C. Barnes; Angela Brock-Kyle; Thomas F. Lydon, Jr.; Ronald A. Nyberg; Sandra G. Sponem; Ronald E. Toupin, Jr.; and Amy J. Lee.

6. Faced with the combined economic impacts of COVID-19 and an oil price war between OPEC and Russia, on or about March 9, 2020 FMO began to receive margin calls from its lender due to the rapidly declining values of its underlying energy-related securities holdings. FMO thereafter sold approximately 80% of its holdings in response to the margin calls, which, among other things, created a tax liability for FMO.

7. Beginning in or about May 2020, GFIA and the Trustees considered numerous strategic alternatives for FMO, including liquidating the Fund, merging it with another fund, replacing its subadvisor, changing its strategy, and converting its structure.

8. In October 2020, GFIA and the Trustees learned that FMO would incur significant tax expenses related to its March 2020 securities sales. GFIA and the Trustees then determined to suspend their consideration of strategic alternatives for FMO until the full impact of the previously unaccounted-for tax expenses could be assessed.

9. On November 13, 2020, FMO announced a downward adjustment of its NAV by 42% as a result of estimated tax expenses. The market price of FMO shares declined after this announcement.

10. GFIA and the Trustees re-engaged in evaluations of strategic alternatives for FMO on or about March 2021.

11. On May 18, 2021, FMO announced a “Shareholder Compensation Plan” for investors who purchased and sold FMO shares during the period its NAV was inaccurately stated due to the unaccrued tax expenses.

12. On September 15, 2021, FMO announced that the Board had approved a merger with the Kayne Anderson Energy Infrastructure Fund (“KYN”) subject to FMO shareholder approval.

13. On December 17, 2021, Plaintiff filed the Verified Derivative Complaint for Declaratory, Injunctive and Monetary Relief, commencing this action in the Delaware Court of Chancery bearing the caption *JB and Margaret Blaugrund Foundation v. Guggenheim Funds Investment Advisors, LLC, et al.*, C.A. No. 2021-1094-NAC, on behalf of itself and all other similarly situated holders of FMO common shares of beneficial interest, against Defendants and the dismissed defendants Donald A. Chubb, Jr., Jerry B. Farley, Roman Friedrich III (collectively, the “Dismissed Trustees”), and Tortoise (together with the Dismissed Trustees, the “Dismissed Parties”), asserting claims for breach of fiduciary duty and breach of contract, and seeking injunctive relief in connection with the pending Merger. Plaintiff also filed a motion for expedited proceedings.

14. On January 3, 2022, the Court granted Plaintiff’s motion for expedition.

15. On January 4, 2022, Plaintiff filed a motion for preliminary injunction seeking to enjoin the vote of the FMO shareholders to approve the Merger.

16. Between January 4 and 24, 2022, the Parties, including the Dismissed Parties, conducted expedited discovery on Plaintiff’s motion for preliminary

injunction, including Plaintiff taking two depositions, one of Defendant GFIA pursuant to Court of Chancery Rule 30(b)(6), and the other of Defendant Ronald Toupin, and Defendants taking the deposition of Plaintiff pursuant to Court of Chancery Rule 30(b)(6).

17. On January 17, 2022, Plaintiff filed the Verified Amended Derivative and Class Action Complaint for Declaratory, Injunctive and Monetary Relief (the “Complaint”). The Complaint alleged that (i) Defendants were grossly negligent and/or breached their fiduciary duties by causing FMO to over-leverage its assets; (ii) Defendants had chosen the Merger instead of liquidation of FMO because it allowed them to avoid personal liability that may have arisen from claims related to the tax expenses FMO had incurred; and (iii) Defendants’ choice to pursue the Merger instead of a liquidation of FMO was not in the best interest of FMO’s stockholders and was a violation of their fiduciary duties to the stockholders. The relief the Complaint sought included (i) damages for the monetary losses incurred by the Fund and caused by the misconduct alleged in the Complaint; and (ii) the injunction of the stockholder vote on the Merger and its closing.

18. Between January 19 and 24, 2022, the Parties and the Dismissed Parties submitted briefs to the Court related to Plaintiff’s motion for preliminary injunction, with a preliminary injunction hearing scheduled for January 28, 2022.

19. On January 24, 2022, FMO and KYN issued eight pages of supplemental proxy disclosures regarding the Merger, including a new subsection to the Proxy containing over three pages of new, material information regarding the process leading up to the Merger.

20. On January 25, 2022, in light of FMO’s significant and material supplemental disclosures, Plaintiff withdrew its motion for preliminary injunction.

21. On February 4, 2022, the FMO shareholders approved the Merger; the Merger closed on March 7, 2022.

22. On January 28 and 31, 2022, Defendants filed motions to dismiss the Complaint pursuant to Court of Chancery Rules 12(b)(6) and 23.1 (the “Motions to Dismiss”).

23. Between March 17, 2022 and May 20, 2022, the Parties and the Dismissed Parties submitted briefs related to the Motions to Dismiss.

24. On February 22, 2023, the Court denied in part the Motions to Dismiss and granted the Motions to Dismiss as to the Dismissed Parties.

25. On March 6, 2023, the Defendants filed an Application for Certification of Interlocutory Appeal (the “Interlocutory Application”) of the Court’s February 22, 2023 ruling.

26. On March 16, 2023, Plaintiff submitted to the Court its opposition to the Interlocutory Application.

27. On March 17, 2023, the Court denied the Interlocutory Application.

28. On March 30, 2023, the Delaware Supreme Court denied the Interlocutory Application.

29. On April 5, 2023, Defendants filed their answers to the Complaint.

30. Between March and November 2023, the Parties continued document and other written discovery, including (i) the production of over 250,000 documents constituting over 2.5 million pages by Defendants; (ii) the production of over 1,265 pages of documents by Plaintiff; and (iii) the deposition of Plaintiff.

31. On November 3, 2023, Plaintiff filed its Motion for Class Certification.

32. Trial in this Action was scheduled to take place on July 8-12, 2024.

33. On November 27, 2023, Plaintiff’s Counsel and Defendants’ Counsel participated in an all-day, in-person mediation session before Greg Danilow (the “Mediator”). The session ended without any agreement being reached.

34. Following the in-person mediation session, Plaintiff’s Counsel and Defendants’ Counsel engaged in additional negotiations under the supervision and guidance of the Mediator. On January 10, 2024, following extensive arm’s-length negotiations, the Parties entered into a confidential settlement term sheet (the “Term Sheet”) that reflected the Parties’ agreement in principle to settle the Action.

35. On January 11, 2024, the Parties filed a Stipulation and Proposed Order Granting Stay, informing the Court of the Parties’ agreement in principle to settle the Action and agreement to stay all further proceedings in the Action pending the Court’s consideration of the Settlement, and the Court entered the order, staying the Action and vacating all remaining dates in the case schedule, including trial. On February 26, 2024, Plaintiff conducted two due diligence depositions, one of Defendant GFIA pursuant to Court of Chancery Rule 30(b)(6), and the other of Defendant Ronald Toupin. The due diligence depositions were for the sole purpose of assessing the reasonableness and adequacy of the Settlement, the scope and timing of which were reasonable and mutually agreed upon by the Parties.

36. After additional negotiations regarding the specific terms of their agreement, the Parties entered into the Stipulation on March 29, 2024. The

Stipulation, which reflects the final and binding agreement between the Parties on the terms and conditions of the Settlement and supersedes the Term Sheet, can be viewed at www.FMOSStockholdersLitigation.com.

37. On April 9, 2024, the Court entered a Scheduling Order directing that notice of the Settlement be provided to potential Class Members, and scheduling the Settlement Hearing to, among other things, consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

38. If you are a member of the Settlement Class, you are subject to the Settlement. The Settlement Class preliminarily certified by the Court solely for purposes of the Settlement consists of:

All holders of FMO common shares of beneficial interest as of the closing of the Merger, whose shares were converted into shares of KYN common stock, including their legal representatives, heirs, successors-in-interest, transferees, and assignees of all such foregoing holders, but excluding: (i) Defendants and any other persons or entities named as defendants in this Action; (ii) any person who is, or was at the time of the Merger, a trustee, officer, director, or partner of FMO; (iii) the immediate family members of any of (i) or (ii) above; (iv) any trusts, estates, entities, or accounts that held FMO common shares for the benefit of any of (i), (ii), or (iii) above; (v) Defendants' directors and officers and/or errors and omissions liability insurance carriers, and any parents, affiliates, or subsidiaries thereof; and (vi) the legal representatives, heirs, successors-in-interest, successors, transferees, and assigns of the foregoing.

PLEASE NOTE: The Settlement Class is a non-“opt-out” class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2). Accordingly, Class Members do not have the right to exclude themselves from the Settlement Class.

WHAT ARE THE TERMS OF THE SETTLEMENT?

39. In consideration of the settlement of the Released Plaintiff's Claims (defined in paragraph 55 below) against Defendants and the other Released Defendants' Persons (defined in paragraph 55 below), Defendants will cause to be deposited the \$18,800,000 Settlement Amount into an interest-bearing escrow account for the benefit of the Settlement Class.

40. The Settlement Amount plus any and all interest earned thereon is referred to the “Settlement Fund.” The Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Fee and Expense Award (as defined in paragraph 57 below); and (iv) any other costs or fees approved by the Court is referred to as the “Net Settlement Fund.” *See* paragraphs 44-54 below for details about the distribution of the Net Settlement Fund to Eligible Class Members (defined in paragraph 48 below).

WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?

41. Plaintiff, through Plaintiff’s Counsel, has conducted a thorough investigation and pursued extensive discovery relating to the claims and the underlying events alleged in the Action. Plaintiff’s Counsel have analyzed the evidence adduced during the investigation and fact and limited expert discovery as described above and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. This investigation and the settlement negotiations among the Parties have provided Plaintiff with a detailed basis upon which to assess the relative strengths and weaknesses of Plaintiff’s positions in this litigation and Defendants’ positions and defenses concerning the merits and any potential damages should any liability be proven in this litigation.

42. Based upon their investigation, prosecution, and mediation of the Action, Plaintiff and Plaintiff’s Counsel have concluded that the terms and conditions of the Settlement and the Stipulation are fair, reasonable, and adequate to Plaintiff and the other members of the Settlement Class, and are in each of their best interests. Based on Plaintiff’s direct oversight of the prosecution of this matter, along with the input of Plaintiff’s Counsel, Plaintiff has agreed to settle the claims asserted in the Action upon the terms and subject to the conditions of the Stipulation, after considering: (i) the substantial benefits that Plaintiff and the other members of the Settlement Class will receive from the resolution of the claims asserted in the Action; (ii) the attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation. The Settlement and the Stipulation shall in no event be construed as, or deemed to be, evidence of a concession by Plaintiff of any infirmity in the claims asserted in the Action.

43. Defendants deny all allegations of wrongdoing, fault, liability, or damage to Plaintiff or any other member of the Settlement Class. Defendants further deny that (i) Plaintiff asserted any valid claim against any of them; (ii) Plaintiff had standing to recover under the sole claim it pursued or that there is any potential liability for such claim; and (iii) Defendants engaged in any wrongdoing or committed any violation of law or breach of duty. Defendants believe that at all

relevant times they acted properly, in good faith, and in a manner consistent with their legal duties. Had this matter proceeded to trial, Defendants intended to show that (i) at all relevant times, GFIA and the Trustees ensured that FMO was managed consistent with its investment objectives, strategy and stated risks, which, as continuously disclosed to stockholders, included a high concentration of investments in energy infrastructure MLPs, a focus on providing both a high level of after-tax returns and distributions to stockholders, and the use of leverage; (ii) at all relevant times, Tortoise, as FMO's subadviser, was responsible on a day-to-day basis for implementing FMO's investment objectives and strategy, including determining FMO's use and amount of leverage; (iii) at all relevant times, both GFIA and the Trustees were fully informed and engaged in overseeing FMO, including monitoring Tortoise's performance as sub-adviser and specifically Tortoise's reasons for setting and following FMO's approximate target leverage levels; (iv) at all relevant times, the Trustees were fully informed and appropriately monitored GFIA's performance as adviser; (v) when the "double black swan" events of March 2020 upturned the global energy markets, both GFIA and the Trustees engaged in daily, sustained and vigorous efforts to manage the crisis effectively; and (vi) GFIA and the Trustees engaged in a 20-month process of considering potential strategic alternatives—ultimately resulting in arms-length negotiations with KYN—all of which occurred prior to the filing of the Complaint, and which resulted in a Merger that was approved by more than 75% of FMO's voting stockholders. Defendants are entering into the Settlement and the Stipulation solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation and to resolve the claims asserted in the Action. The Settlement and the Stipulation shall in no event be construed as, or deemed to be, evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or factual allegation asserted in the Action or of any fault or liability, wrongdoing, or damage whatsoever or any infirmity in the defenses that any of the Defendants have or could have asserted.

**WILL I RECEIVE A PAYMENT FROM THE SETTLEMENT?
HOW MUCH WILL MY PAYMENT FROM THE SETTLEMENT, IF
ANY, BE? HOW WOULD I RECEIVE MY PAYMENT?**

44. **Please Note:** If you are eligible to receive a payment from the Net Settlement Fund, you do *not* have to submit a claim form in order to receive your payment.

45. If the Settlement is approved by the Court and the Effective Date of the Settlement occurs, the Net Settlement Fund will be distributed in accordance with

the proposed Plan of Allocation stated below or such other plan of allocation as may be approved by the Court.

46. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and the Effective Date of the Settlement has occurred. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

47. The Court may approve the Plan of Allocation as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the Settlement website, www.FMOSStockholdersLitigation.com.

PROPOSED PLAN OF ALLOCATION

48. The Net Settlement Fund will be distributed on a *pro rata* basis to Eligible Class Members. “Eligible Class Members” means Eligible Beneficial Holders (defined in paragraph 49 below) and Eligible Record Holders (defined in paragraph 50 below).

49. “Eligible Beneficial Holder” means the ultimate beneficial owner of any Eligible Shares (defined in paragraph 51 below) held of record by Cede & Co. (“Cede”), provided that no Excluded Stockholder² may be an Eligible Beneficial Holder.

50. “Eligible Record Holder” means the record holder of any Eligible Shares, other than Cede, provided that no Excluded Stockholder may be an Eligible Record Holder.

51. “Eligible Shares” means FMO common shares of beneficial interest held at the closing of the Merger on March 7, 2022 that were converted into common shares of KYN common stock.

52. Each Eligible Class Member will be eligible to receive a *pro rata* payment from the Net Settlement Fund equal to the product of (i) the number of Eligible Shares held by the Eligible Class Member and (ii) the “Per-Share Recovery” for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares held by all Eligible Class Members.

53. Payments from the Net Settlement Fund to Eligible Class Members will be made in the same manner in which Eligible Class Members received the Merger

² “Excluded Stockholders” means the persons and entities that Defendants will identify to be excluded from the Settlement Class by definition, in accordance with paragraph 25 of the Stipulation.

consideration. Accordingly, if your Eligible Shares were held in “street name” and the Merger consideration was paid into your brokerage account, your broker will be responsible for depositing your Settlement payment into that same brokerage account.

54. Subject to Court approval in the Class Distribution Order,³ Plaintiff’s Counsel will direct the Settlement Administrator to conduct the distribution of the Net Settlement Fund to Eligible Class Members as follows:

(i) With respect to Eligible Shares held of record by the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company (collectively, the “DTC”), through its nominee Cede, the Settlement Administrator will obtain from the DTC, and the DTC will provide to the Settlement Administrator, a copy of the position report generated by the DTC in anticipation of the Merger (the “DTC Position Report”), which will include the number of Eligible Shares for each DTC participant listed (the “DTC Participants”) and any additional information necessary to conduct a distribution of the Net Settlement Fund to Eligible Beneficial Holders, including contact information used to communicate with the appropriate representatives of each DTC Participant that held Eligible Shares.

Using that information, the Settlement Administrator will cause that portion of the Net Settlement Fund to be allocated to Eligible Beneficial Holders who held their Eligible Shares through DTC Participants to be paid to the DTC Participants by paying each the Per-Share Recovery times its respective Closing Security Position,⁴ subject to payment suppression instructions with respect to Excluded Shares and any other shares ineligible for recovery from the Settlement. The DTC Participants and their respective customers, including any intermediaries, shall then ensure *pro rata* payment to each Eligible Beneficial Holder based on the number of Eligible Shares beneficially owned by such Eligible Beneficial Holder.

(ii) With respect to Eligible Shares held of record other than by Cede, as nominee for DTC (a “Non-Cede Record Position”), the payment with respect to each such Non-Cede Record Position will be made by the Settlement Administrator from the Net Settlement Fund directly to the Eligible Record Holder of each Non-Cede Record Position in an amount equal to the Per-Share Recovery times the number of Eligible Shares comprising such Non-Cede Record Position.

³ “Class Distribution Order” means any order entered by the Court permitting the distribution of the Net Settlement Fund to Eligible Class Members.

⁴ For each DTC Participant, the “Closing Security Position” is the number of Eligible Shares held by such DTC Participant, as reflected on the DTC Position Report.

(iii) A person or entity who purchased Eligible Shares but had not settled those Eligible Shares at the closing of the Merger on March 7, 2022 (“Non-Settled Shares”) *shall be* treated as an Eligible Class Member with respect to those Non-Settled Shares, and a person or entity who sold those Non-Settled Shares on or before the closing of the Merger on March 7, 2022 *shall not be* treated as an Eligible Class Member with respect to those Non-Settled Shares.

(iv) In the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (*i.e.*, more than six months from the check’s issue date), the DTC Participants or the holder of a Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution.

(v) Any Class Member that has been informed by the Internal Revenue Service that he, she, or it is subject to backup withholding under the provisions of the Internal Revenue Code must contact the Settlement Administrator at info@FMOSTockholdersLitigation.com to inform the Settlement Administrator that he, she, or it is subject to backup withholding.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

55. If the Settlement is approved, the Court will enter an Order and Final Judgment (the “Judgment”). Pursuant to the Judgment, the claims asserted against Defendants in the Action will be dismissed with prejudice and the following releases will occur:

(i) **Release of Claims by Plaintiff and the Settlement Class:** Upon the Effective Date of the Settlement, Plaintiff and all other members of the Settlement Class, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all claims and causes of action, whether arising under state, federal, or common law, that Plaintiff or any other member of the Settlement Class asserted or could have asserted in their capacity as a FMO shareholder arising out of, relating to, or based upon the allegations in the Complaint, the Defendants’ alleged mismanagement of the Fund, or the Merger, excluding (i) claims relating to the enforcement of the Stipulation and (ii) claims against the Released Defendants’ Persons (defined below) arising from conduct occurring after the date of the Term Sheet (the “Released Plaintiff’s Claims”) against Defendants; their attorneys

(including Defendants' Counsel), insurers, and reinsurers; and the current and former parents, affiliates, subsidiaries, officers, directors, agents, partnerships, partners, trustees, trusts, employees, family members, successors, predecessors, assigns, and assignees of the foregoing persons and entities (the "Released Defendants' Persons"), and shall forever be barred and enjoined from prosecuting the Released Plaintiff's Claims against the Released Defendants' Persons.

(ii) **Release of Claims by Defendants:** Upon the Effective Date of the Settlement, Defendants, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all claims and causes of action, whether arising under state, federal, or common law, that arise out of, relate to, or are based upon the institution, prosecution, or settlement of the claims asserted in the Action, excluding (i) claims relating to the enforcement of the Stipulation and (ii) claims against Released Plaintiff's Persons (defined below) arising from conduct occurring after the date of the Term Sheet (the "Released Defendants' Claims") against Plaintiff; Plaintiff's attorneys (including Plaintiff's Counsel); and all other Settlement Class Members; and the current and former parents, affiliates, subsidiaries, officers, directors, agents, partnerships, partners, trustees, trusts, employees, family members, successors, predecessors, assigns, and assignees of the foregoing persons and entities (the "Released Plaintiff's Persons"), and shall forever be barred and enjoined from prosecuting the Released Defendants' Claims against the Released Plaintiff's Persons.

56. By Order of the Court, (i) all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, have been stayed, and (ii) pending final determination of whether the Settlement should be approved, Plaintiff and each of the other Settlement Class Members are barred and enjoined from commencing, instigating, or prosecuting the Released Plaintiff's Claims against the Released Defendants' Persons.

HOW WILL PLAINTIFF'S COUNSEL BE PAID?

57. Plaintiff's Counsel have not received any payment for their services in pursuing claims in the Action on behalf of the Settlement Class, nor have Plaintiff's Counsel been paid for their expenses incurred in connection with the Action. In connection with the Settlement, Plaintiff's Counsel will apply to the Court for a collective award of attorneys' fees and payment of Litigation Expenses (the "Fee and Expense Award") to be paid solely from (and out of) the Settlement Fund. In

connection with Plaintiff's Counsel's application for a Fee and Expense Award (the "Fee and Expense Application"), Plaintiff may petition the Court for an incentive award to be paid solely from any Fee and Expense Award to Plaintiff's Counsel (the "Incentive Award").

58. The Fee and Expense Application will include a request for an award of attorneys' fees in an amount not to exceed 22% of the Settlement Fund, net of Court-approved Litigation Expenses, plus payment of Litigation Expenses incurred by Plaintiff's Counsel in connection with the institution, prosecution, and resolution of the Action in an amount not to exceed \$150,000. In connection with the Fee and Expense Application, Plaintiff may petition the Court for an Incentive Award not to exceed \$100,000 to be paid solely from any Fee and Expense Award to Plaintiff's Counsel.

59. The Court will determine the amount of any Fee and Expense Award to Plaintiff's Counsel and any Incentive Award to Plaintiff. Any Fee and Expense Award will be paid out of the Settlement Fund and any Incentive Award will be paid solely from any Fee and Expense Award. Class Members are not personally liable for any such fees or expenses.

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?
DO I HAVE TO ATTEND THE HEARING? MAY I SPEAK AT THE
HEARING IF I DON'T LIKE THE SETTLEMENT?**

60. Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the Settlement Hearing. Class Members can recover from the Settlement without attending the Settlement Hearing.

61. Please Note: The date and time of the Settlement Hearing may change without further written notice to Class Members. In addition, the Court may decide to conduct the Settlement Hearing remotely by telephone or videoconference, or otherwise allow Class Members to appear at the hearing remotely by phone or video, without further written notice to Class Members. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Class Members must or may participate remotely by phone or video, it is important that you monitor the Court's docket and the Settlement website, www.FMOSStockholdersLitigation.com, before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing, or updates regarding in-person or remote appearances at the hearing, will be posted to the Settlement website, www.FMOSStockholdersLitigation.com. Also, if the Court requires or allows**

Class Members to participate in the Settlement Hearing remotely by telephone or videoconference, the information needed to access the conference will be posted to the Settlement website, www.FMOSStockholdersLitigation.com.

62. The Settlement Hearing will be held on **July 9, 2024, at 1:30 p.m.**, before The Honorable Nathan A. Cook, Vice Chancellor, either in person at the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, or remotely by telephone or videoconference (in the discretion of the Court), to, among other things: (i) determine whether to finally certify the Settlement Class for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) determine whether Plaintiff and Plaintiff's Counsel have adequately represented the Settlement Class, and whether Plaintiff should be finally appointed as Class Representative for the Settlement Class and Plaintiff's Counsel should be finally appointed as Class Counsel for the Settlement Class; (iii) determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to Plaintiff and the other members of the Settlement Class and in their best interests; (iv) determine whether the proposed Judgment approving the Settlement, dismissing the Action with prejudice, and granting the Releases provided under the Stipulation should be entered; (v) determine whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved; (vi) determine whether and in what amount any Fee and Expense Award should be paid out of the Settlement Fund, including any Incentive Award to Plaintiff to be paid solely from any Fee and Expense Award; (vii) hear and rule on any objections to the Settlement, the proposed Plan of Allocation, and/or Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an Incentive Award to be paid solely from any Fee and Expense Award; and (viii) consider any other matters that may properly be brought before the Court in connection with the Settlement.

63. Any Class Member may object to the Settlement, the proposed Plan of Allocation, or Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an Incentive Award ("Objector"); *provided, however*, that no Objector shall be heard or entitled to object unless, **on or before June 24, 2024**, such person: (1) files his, her, or its written objection, together with copies of all other papers and briefs supporting the objection, with the Register in Chancery at the address set forth below; (2) serves such papers (electronically by File & Serve*Xpress*, by hand, by first-class U.S. mail, or by express service) on Plaintiff's Counsel and Defendants' Counsel at the addresses set forth below; and (3) emails a copy of the written objection to jeroen@blbglaw.com, aaron@moka.law, david.kotler@dechert.com, and rlending@vedder.com.

REGISTER IN CHANCERY	
<p>Court of Chancery of the State of Delaware New Castle County Leonard L. Williams Justice Center 500 North King Street Wilmington, DE 19801</p>	
PLAINTIFF’S COUNSEL	
<p>Jeroen van Kwawegen Bernstein Litowitz Berger & Grossmann LLP 1251 Avenue of the Americas 44th Floor New York, NY 10020</p>	<p>Aaron T. Morris Morris Kandinov LLP 305 Broadway, 7th Floor New York, NY 10007</p>
DEFENDANTS’ COUNSEL	
<p>David Kotler Dechert LLP 1095 Avenue of the Americas Three Bryant Park New York, NY 10036</p>	<p>Randall Lending Vedder Price P.C. 222 North LaSalle Street Chicago, IL 60601</p>

64. Any objections must: (i) identify the case name and civil action number, “*JB and Margaret Blaugrund Foundation v. Guggenheim Funds Investment Advisors, LLC, et al.*, C.A. No. 2021-1094-NAC”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector; (iv) state with specificity the grounds for and purpose of the objection, including a detailed statement of the specific legal and factual basis for each and every objection and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) if the Objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the Objector may call to testify, and any exhibits the Objector intends to introduce into evidence at the hearing; and (vi) include documentary evidence sufficient to prove that the Objector is a member of the Settlement Class. Plaintiff’s Counsel are authorized to request from any Objector additional information or documentation sufficient to prove that the Objector is a member of the Settlement Class.

65. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

66. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an Incentive Award (assuming you timely file and serve a written objection as described above), you must also file a notice of appearance with the Register in Chancery and serve it on Plaintiff's Counsel and Defendants' Counsel at the mailing and email addresses set forth in paragraph 63 above so that the notice is *received on or before June 24, 2024*. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

67. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Plaintiff's Counsel and Defendants' Counsel at the mailing and email addresses set forth in paragraph 63 above so that the notice is *received on or before June 24, 2024*.

68. The Settlement Hearing may be adjourned by the Court without further written notice to Class Members. If you intend to attend the Settlement Hearing, you should confirm the date, time, and location with Plaintiff's Counsel.

69. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection (including the right to appeal) and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an Incentive Award, or any other matter related to the Settlement or the Action, and will otherwise be bound by the Judgment to be entered and the Releases to be given. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I
HAVE QUESTIONS?**

70. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the Settlement website, www.FMOSStockholdersLitigation.com. If you have questions regarding the Settlement, you may contact the Settlement Administrator by mail at FMO Stockholders Litigation, c/o JND Legal Administration, P.O. Box 91400, Seattle, WA 98111; by telephone at 855-208-4128; or by email at info@FMOSStockholdersLitigation.com. You may also contact Plaintiff's Counsel: Jeroen van Kwawegen, Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 800-380-8496 (telephone), and settlements@blbglaw.com (email); and Aaron T. Morris, Morris Kandinov LLP, 305 Broadway, 7th Floor, New York, NY 10007, 212-431-7473 (telephone), and aaron@moka.law (email). Do not contact the Court or its staff with questions about the terms of the proposed Settlement.

WHAT IF I HELD SHARES ON SOMEONE ELSE'S BEHALF?

71. If you are a broker or other nominee that held FMO common shares as of the closing of the Merger for the beneficial interest of persons or entities other than yourself, you are requested to either: (i) within seven (7) calendar days of receipt of this Notice, request from the Settlement Administrator sufficient copies of this Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, addresses, and, if available, email addresses of all such beneficial owners to FMO Stockholders Litigation, c/o JND Legal Administration, P.O. Box 91400, Seattle, WA 98111. If you choose the second option, the Settlement Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought. A copy of this Notice may also be obtained from the Settlement website, www.FMOSStockholdersLitigation.com, by calling the Settlement Administrator toll free at 855-208-4128, or by emailing the Settlement Administrator at info@FMOSStockholdersLitigation.com.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE
REGISTER IN CHANCERY ABOUT THIS NOTICE OR QUESTIONS
ABOUT THE TERMS OF THE PROPOSED SETTLEMENT**

Dated: May 10, 2024

BY ORDER OF THE COURT
OF CHANCERY OF THE
STATE OF DELAWARE