



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

**STIPULATION AND AGREEMENT OF SETTLEMENT,
COMPROMISE, AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release, dated March 29, 2024 (the “Stipulation”), is entered into by and among: (i) Plaintiff JB and Margaret Blaugrund Foundation (“Plaintiff”), on behalf of itself and the other members of the Settlement Class (as defined in Paragraph 1(dd) 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, Ronald E. Toupin, Jr., and Amy J. Lee (collectively, “Defendants”);

Plaintiff and Defendants together, the “Parties”).¹ Subject to the terms and conditions set forth herein and the approval of the Court of Chancery of the State of Delaware (the “Court”) under Delaware Court of Chancery Rule 23, the Settlement embodied in this Stipulation is intended (i) to be a full and final disposition of the claims asserted against Defendants in the above-captioned stockholder class action (the “Action”) and (ii) fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Claims.

WHEREAS:

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

B. 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.

C. 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

¹ Unless defined elsewhere in this Stipulation, all terms herein with initial capitalization shall have the meanings given to them in Paragraph 1 below.

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.

D. 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.

E. 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.

F. 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.

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

H. 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.

I. 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.

J. 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.

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

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

M. 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).

N. On January 17, 2022, Plaintiff filed the Verified Amended Derivative and Class Action Complaint for Declaratory, Injunctive and Monetary Relief (as defined below, 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.

O. 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.

P. 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.

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

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

S. 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").

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

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

V. 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.

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

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

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

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

AA. 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.

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

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

DD. 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.

EE. 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.

FF. 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.

GG. This Stipulation (together with the Exhibits hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, reflects the final and binding agreement among the Parties, and supersedes the Term Sheet.

HH. 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.

II. 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 this 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 this 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 this Stipulation. The Settlement and this 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.

JJ. 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 this 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 this 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.

KK. The Parties recognize that the Action has been filed and prosecuted by Plaintiff in good faith and defended by Defendants in good faith and further that the Settlement was negotiated at arms' length, in good faith, and reflects an agreement that was reached voluntarily after consultation with experienced legal counsel.

NOW THEREFORE, it is **STIPULATED AND AGREED**, by and among Plaintiff (individually and on behalf of the Settlement Class) and Defendants that, subject to the approval of the Court under Court of Chancery Rule 23, for good and valuable consideration set forth herein and conferred on the Settlement Class, the sufficiency of which is acknowledged, the claims asserted in the Action on behalf of the Settlement Class against Defendants shall be finally and fully settled, compromised, and dismissed with prejudice, and that the Released Plaintiff's Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Defendants' Persons, and that the Released Defendants' Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Plaintiff's Persons, in the manner set forth herein.

I. DEFINITIONS

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation and any Exhibits attached hereto and made a part hereof, shall have the meanings given to them below:

(a) “Complaint” means the Verified Amended Derivative and Class Action Complaint for Declaratory, Injunctive and Monetary Relief dated January 17, 2022.

(b) “Defendants’ Counsel” means Young Conaway Stargatt & Taylor, LLP, and Dechert LLP, counsel for GFIA and Amy J. Lee; and Troutman Pepper Hamilton Sanders LLP and Vedder Price P.C., counsel for Randall C. Barnes, Angela Brock-Kyle, Thomas F. Lydon, Jr., Ronald A. Nyberg, Sandra G. Sponem, and Ronald E. Toupin, Jr.

(c) “DTC” means the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company.

(d) “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 32 of this Stipulation have been met and have occurred or have been waived.

(e) “Escrow Account” means the interest-bearing account maintained by Plaintiff’s Counsel and into which the Settlement Amount shall be deposited.

(f) “Excluded Stockholders” means the persons and entities that Defendants shall identify to be excluded from the Settlement Class by definition.

(g) “FMO” or the “Fund” means Fiduciary/Claymore Energy Infrastructure Fund.

(h) “Final,” when referring to the Judgment or any other court order, means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any motion for reconsideration, reargument, appeal, or other review of the order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari, reconsideration, or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari, reconsideration, reargument, or other form of review, or the denial of a writ of certiorari, reconsideration, reargument, or other form of review, and, if certiorari, reconsideration, or other form of review is granted, the date of final affirmance following review pursuant to that grant; provided, however, that any disputes or appeals relating solely to (i) the amount, payment, or allocation of attorneys’ fees and expenses or (ii) the plan of allocation of the Settlement proceeds (as submitted or subsequently modified), shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise

prevent, limit, or otherwise affect the Judgment, or prevent, limit, delay, or hinder entry of the Judgment.

(i) “Judgment” means the Order and Final Judgment, substantially in the form attached hereto as Exhibit D, to be entered by the Court approving the Settlement.

(j) “KYN” means Kayne Anderson Energy Infrastructure Fund, Inc.

(k) “Litigation Expenses” means costs and expenses incurred by Plaintiff’s Counsel in connection with commencing, prosecuting, and settling the Action, for which Plaintiff’s Counsel intend to apply to the Court for payment from the Settlement Fund.

(l) “Merger” means the merger of FMO with KYN on March 7, 2022.

(m) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Fee and Expense Award (as defined in Paragraph 15 below); and (iv) any other costs or fees approved by the Court.

(n) “Notice” means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B, which is to be mailed (or emailed) to potential Settlement Class Members.

(o) “Notice and Administration Costs” means the costs, fees, and expenses that are incurred by the Settlement Administrator and/or Plaintiff’s Counsel in connection with: (i) providing notice to the Settlement Class; and (ii) administering the Settlement, including but not limited to the costs, fees, and expenses incurred in connection with the Escrow Account.

(p) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(q) “Plaintiff’s Counsel” means Bernstein Litowitz Berger & Grossmann LLP and Morris Kandinov LLP.

(r) “Released Claims” means, collectively, the Released Plaintiff’s Claims and the Released Defendants’ Claims.

(s) “Released Defendants’ Claims” shall have the meaning set forth in Paragraph 5 below.

(t) “Released Defendants’ Persons” means 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.

(u) “Released Plaintiff’s Claims” shall have the meaning set forth in Paragraph 4 below.

(v) “Released Plaintiff’s Persons” means 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.

(w) “Released Persons” means, collectively, the Released Plaintiff’s Persons and the Released Defendants’ Persons.

(x) “Releases” means the releases set forth in Paragraphs 4-5 of this Stipulation.

(y) “Scheduling Order” means the Order, substantially in the form attached hereto as Exhibit A, directing notice of the Settlement and scheduling Settlement-related events.

(z) “Settlement” means the resolution of the Action as against Defendants on the terms and conditions set forth in this Stipulation.

(aa) “Settlement Administrator” means the settlement administrator selected by Plaintiff to provide notice to the Settlement Class and administer the settlement.

(bb) “Settlement Amount” means \$18,800,000 (United States Dollars) in cash.

(cc) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(dd) “Settlement Class” means 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.

(ee) “Settlement Class Member” means a member of the Settlement Class.

(ff) “Settlement Hearing” means the hearing to be set by the Court under Delaware Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement.

(gg) “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

(hh) “Taxes” means: (i) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Plaintiff’s Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(ii) “Term Sheet” means the Term Sheet to Settle Stockholder Class Action entered into by the Parties on January 10, 2024.

(jj) “Unknown Claims” means any claims the releasing party does not know or suspect to exist in his, her, or its favor at the time of entering into this Stipulation, including without limitation those claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the

United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

II. CLASS CERTIFICATION

2. Solely for the purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Settlement Class as a non-opt-out class pursuant to Delaware Court of Chancery Rules Rules 23(a), 23(b)(1), and 23(b)(2); (b) appointment of Plaintiff as Class Representative for the Settlement Class; and (c) appointment of Plaintiff's Counsel as Class Counsel for the Settlement Class.

3. The certification of the Settlement Class shall be binding only with respect to the Settlement and this Stipulation. In the event that the Settlement or this Stipulation is terminated pursuant to its terms or the Effective Date otherwise fails to occur, the certification of the Settlement Class shall be deemed to be vacated and the Action shall proceed as though the Settlement Class never had been certified.

III. RELEASE OF CLAIMS

4. Without further action by anyone, 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 arising from conduct occurring after the date of the Term Sheet (the "Released Plaintiff's Claims") against the Released Defendants' Persons, and shall forever be barred and enjoined from prosecuting the Released Plaintiff's Claims against the Released Defendants' Persons.

5. Without further action by anyone, 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 arising from conduct occurring after the date of the Term Sheet (the "Released Defendants' Claims") against the Released Plaintiff's Persons, and shall forever be barred and enjoined from prosecuting the Released Defendants' Claims against the Released Plaintiff's Persons.

IV. SETTLEMENT CONSIDERATION

6. In consideration for the full and final release, settlement, and discharge of all Released Claims against the Released Parties and the full and final disposition of the Action, the Parties have agreed to the monetary consideration stated in Paragraph 7 below.

7. Defendants shall cause their insurer (the "Insurer") to deposit the Settlement Amount into the Escrow Account no later than twenty (20) business days after the later of: (a) the Court's entry of the Scheduling Order; or (b) Defendants' Counsel's receipt of W-9 form and wire transfer instructions for the Escrow Account. Defendants are responsible for causing the Insurer to timely pay the

Settlement Amount into the Escrow Account but otherwise shall have no obligation or liability to pay any of the Settlement Amount. Payment of the Settlement Amount shall be made by wire transfer into the Escrow Account; payment shall not be made by check. If the Insurer fails to deposit the full Settlement Amount in a timely manner, Plaintiff may exercise its right under Paragraph 34 below to terminate the Settlement, provided that both (i) Plaintiff's Counsel have provided written notice of the election to terminate to Defendants' Counsel, and (ii) the entire Settlement Amount is not deposited into the Escrow Account within five (5) business days after Plaintiff's Counsel provide such written notice.

V. USE OF SETTLEMENT FUND

8. The Settlement Amount plus any and all interest earned thereon is referred to as the "Settlement Fund." The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Fee and Expense Award (as defined in Paragraph 15 below); and (d) any other costs or fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Class Members pursuant to the proposed Plan of Allocation set forth in the Notice or such other plan of allocation approved by the Court.

9. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All

funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

10. Defendants shall not bear any responsibility or liability related to the investment of the Settlement Fund.

11. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiff's Counsel, as administrators of the Settlement Fund within the meaning of

Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Plaintiff's Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Neither the Released Defendants' Persons nor the Insurer shall have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Plaintiff's Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiff's Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this Paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Plaintiff's Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous Paragraph and in all events shall

reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

13. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, Defendants, the Insurer, the other Released Defendants' Persons, and any other person or entity who or which paid any portion of the Settlement Amount shall not have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including the inability to locate Settlement Class Members or the failure of Settlement Class Members to deposit settlement funds distributed by the Administrator. If the Settlement is terminated pursuant to the terms of this Stipulation or the Effective Date does not occur for any other reason, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Plaintiff's Counsel consistent with Paragraph 16 below), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing, shall be refunded by the Escrow Agent to the Insurer in accordance with Paragraph 35(h) below.

14. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Plaintiff's Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable. Such costs and

expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees of Settlement Administrator or the Escrow Agent, shall not be returned or repaid to Defendants, any of the other Released Defendants' Persons, or any other person or entity who or which paid any portion of the Settlement Amount.

VI. ATTORNEYS' FEES AND LITIGATION EXPENSES

15. 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"). Plaintiff's Counsel's Fee and Expense Application, including any application for an Incentive Award, is not the subject of any agreement among the Parties other than what is set forth in this Stipulation.

16. The Fee and Expense Award shall be paid to Plaintiff's Counsel, and any Incentive Award approved by the Court shall be paid to Plaintiff, from the Settlement Fund immediately upon award, notwithstanding the existence of a potential for appeal therefrom or collateral attack on the Settlement or any part thereof.

17. Plaintiff and Plaintiff's Counsel acknowledge and agree that any payment of the Fee and Expense Award is subject to their obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiff and Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the Fee and Expense Award has become Final.

18. Any Fee and Expense Award and the disposition of the Fee and Expense Application is not a material term of this Stipulation or the Settlement and it is not a condition of this Stipulation or the Settlement that the Fee and Expense Application be granted. The Fee and Expense Application may be considered

separately from this Stipulation or the proposed Settlement. Any disapproval or modification of the Fee and Expense Application by the Court or on appeal shall not affect or delay the enforceability of this Stipulation, provide Plaintiff or Plaintiff's Counsel with the right to cancel or terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the Releases. Final resolution of the Fee and Expense Application shall not be a condition to the dismissal with prejudice of the Action as to Defendants or the effectiveness of the Releases.

19. Plaintiff's Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which they, in their discretion, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. Neither the Released Defendants' Persons nor the Insurer shall have any responsibility for or liability whatsoever with respect to the allocation or award of any Fee and Expense Award to Plaintiff's Counsel.

VII. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL

20. As soon as practicable after execution of this Stipulation, Plaintiff shall apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A, providing for, among other things: (a) the dissemination by mail (or email) of the Notice; (b) the publication of the Summary Notice; and (c) the scheduling of the Settlement Hearing to consider: (i) final approval of the proposed Settlement; (ii) the request that the Judgment, substantially

in the form attached hereto as Exhibit D, be entered by the Court; (iii) Plaintiff's Counsel's application for an award of attorneys' fees and Litigation Expenses, including any application for incentive awards to Plaintiff, and approval of the proposed Plan of Allocation; and (iv) any objections to any of the foregoing. The Parties shall take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. The date and time of the Settlement Hearing set by the Court in Scheduling Order may be changed by the Court without further written notice to the Settlement Class.

21. The Parties shall request at the Settlement Hearing that the Court approve the Settlement and enter the Judgment, substantially in the form attached hereto as Exhibit D. The Parties shall take all reasonable and appropriate steps to obtain entry of the Judgment.

VIII. DUE DILIGENCE DISCOVERY

22. The Settlement and this Stipulation is subject to the completion of reasonable due diligence discovery by Plaintiff. Defendants substantially completed their production of documents regarding the allegations and claims asserted in the Action. 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. Each Party shall have the right to withdraw from the Settlement and this Stipulation if, in that Party's good-faith discretion, it determines that information produced during the due diligence discovery renders the Settlement unfair, unreasonable, or inadequate.

IX. SETTLEMENT ADMINISTRATION

23. Plaintiff shall retain a Settlement Administrator to provide notice of the Settlement and for the disbursement of the Net Settlement Fund to eligible Class Members. Defendants and the other Released Defendants' Persons shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator, except that Defendants shall provide, to the extent not already provided, the stockholder register from FMO's transfer agent (the "Stockholder Register") containing the names, mailing addresses, and, when possible, email addresses for all registered holders of FMO common shares ("Registered Holders") as of the closing of the Merger on March 7, 2022 and the other information required to be provided under Paragraphs 25 and 26 below.

24. Defendants shall cooperate with Plaintiff in providing notice of the Settlement and administering the Settlement, including, but not limited to, providing the information required under Paragraphs 25 and 26 below.

25. For purposes of distributing the Net Settlement Fund to eligible Settlement Class Members, no later than five (5) business days prior to the

Settlement Hearing, Defendants, at no cost to the Settlement Fund, Plaintiff's Counsel, or the Settlement Administrator, will cause to be provided to the Settlement Administrator or Plaintiff's Counsel in an electronically searchable form, such as Excel, the following information to the extent reasonably available:

(a) for each of the Registered Holders, the number of FMO common shares held by those persons and entities as of the closing of the Merger on March 7, 2022 which were converted into shares of KYN common stock;

(b) the position report generated by the DTC in anticipation of the Merger, which shall include the number of FMO common shares for each DTC participant listed; and

(c) a list of the Excluded Stockholders, and for each of the Excluded Stockholders listed: (i) an indication of whether the Excluded Stockholder was, as of the closing of the Merger on March 7, 2022, either (x) a Registered Holder of FMO common shares or (y) a beneficial holder of FMO common shares whose shares were held via a financial institution on behalf of the Excluded Stockholder ("Beneficial Holder"); (ii) the number of FMO common shares owned by the Excluded Stockholder as of the closing of the Merger on March 7, 2022 which were converted into shares of KYN common stock ("Excluded Shares"); and (iii) for each of the Excluded Stockholders that is a Beneficial Holder, the name and "DTC Number" of the financial institution where his, her, or its Excluded Shares were held.

26. At the request of Plaintiff's Counsel, Defendants shall use reasonable efforts to provide such additional information as may be required to distribute the Net Settlement Fund to eligible Settlement Class Members and not to Excluded Stockholders, and shall use reasonable efforts to obtain suppression letters from Excluded Stockholders and/or Excluded Stockholders' brokers if requested to do so by the DTC.

27. Defendants and other Excluded Stockholders shall not have any right to receive any part of the Settlement Fund for his, her, or its own account(s) (*i.e.*, accounts in which he, she, or it holds a proprietary interest, but not including accounts managed on behalf of others), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

28. The Net Settlement Fund shall be distributed to eligible Settlement Class Members in accordance with the proposed Plan of Allocation set forth in the Notice or such other plan of allocation as may be approved by the Court. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiff and Plaintiff's Counsel may not cancel or terminate the Settlement (or this Stipulation) based on

this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Released Defendants' Persons shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action and shall not have any involvement with the application of the Court-approved plan of allocation.

29. The Net Settlement Fund shall be distributed to eligible Class Members only after the Effective Date of the Settlement and after: (i) all Notice and Administration Costs, all Taxes, and any Fee and Expense Award, including any Incentive Award to Plaintiff to be solely from any Fee and Expense Award, have been paid from the Settlement Fund or reserved; and (ii) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the "Class Distribution Order"). At such time that Plaintiff's Counsel, in their sole discretion, deem it appropriate to move forward with the distribution of the Net Settlement Fund to the Settlement Class, Plaintiff's Counsel will apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order.

30. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. Plaintiff, Defendants, and the other Released Defendants' Persons and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any

payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding eligible FMO common shares, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

31. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

X. CONDITIONS OF SETTLEMENT

32. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events, which the Parties shall use their best efforts to achieve:

(a) the Settlement Amount has been paid into the Escrow Account accordance with Paragraph 7 above;

(b) the Court has entered the Judgment approving the Settlement and dismissing the Action with prejudice as to all Defendants;

(c) the Judgment has become Final.

33. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants or their insurance carrier(s) in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

XI. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION

34. In addition to whatever other rights to terminate Plaintiff or Defendants may have herein, Plaintiff and Defendants shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Parties within thirty (30) calendar days of: (a) the Court’s refusal to enter the Scheduling Order in any material respect or alteration of the Scheduling Order in any material respect prior to entry; or (b) the Court’s refusal to enter the Judgment in any material respect or alteration of the Judgment in any material respect prior to entry, or the Court enters the Judgment, but on or following appellate review, the Judgment is modified or reversed in any material respect. Plaintiff shall also have the unilateral right to terminate the Settlement and this Stipulation, by providing written notice of his election to terminate to Defendants, if the full payment of the Settlement Amount into the Escrow Account is not made in a timely manner in accordance with Paragraph 7 above. Neither a modification nor reversal on appeal of any Fee and Expense Award or any plan of allocation of the Net Settlement Fund shall be deemed to be a material modification of the Judgment, the Settlement, or this Stipulation.

35. If any Party exercises its or their right to terminate the Settlement as provided in this Stipulation or the Effective Date of the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) The Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on January 10, 2024;

(c) The Parties shall negotiate a new trial schedule in good faith and proceed as if the Stipulation had not been executed and the related orders had not been entered;

(d) All of the Parties' respective claims and defenses as to any issue in the Action (as they stood on January 10, 2024) shall be preserved without prejudice in any way;

(e) Statements made in connection with the negotiation of this Stipulation shall not be deemed to prejudice in any way the positions of any of the Parties with respect to the Action or to constitute an admission of fact or wrongdoing by any Party, and shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action;

(f) Neither the existence of the Stipulation nor its contents, nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation, arbitration, or proceeding.

(g) The terms and provisions of this Stipulation, with the exception of this Paragraph 35 and Paragraphs 14, 17, 36, 57, and 58 of this Stipulation, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(h) Within twenty (20) business days after joint written notification of termination is sent by Defendants' Counsel and Plaintiff's Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Plaintiff's Counsel consistent with Paragraph 16 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing, shall be refunded by the Escrow Agent to the Insurer and/or such other person or entity contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement Amount (according to instructions to be provided by Defendants to Plaintiff's Counsel). In the event that the funds received by Plaintiff's Counsel consistent with Paragraph 16 above have not been refunded to the Settlement Fund within the twenty (20) business days specified in this Paragraph, those funds shall be refunded by the Escrow Agent to the Insurer and/or such other person or entity

contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement Amount (according to instructions to be provided by Defendants to Plaintiff's Counsel) immediately upon their deposit into the Escrow Account consistent with Paragraph 17 above.

XII. NO ADMISSION OF WRONGDOING

36. Neither the Term Sheet, this Stipulation (whether or not consummated), including the Exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet or this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet or this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil,

criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Plaintiff's Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiff's Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiff's Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Released Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been achieved after trial; *provided, however,* that if this Stipulation is approved by the Court, the Parties and the Released Persons and their respective counsel may refer to it to effectuate the

protections from liability granted under this Stipulation or otherwise to enforce the terms of the Settlement.

XIII. MISCELLANEOUS PROVISIONS

37. All of the Exhibits attached hereto are incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, if there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of the Stipulation shall prevail.

38. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiff, Plaintiff and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Released Persons pursuant to this Stipulation, in which event the Releases and Judgment shall be null and void, and Plaintiff and Defendants shall be restored to their respective positions in the litigation as provided in Paragraph 35 above and any cash amounts in the Settlement Fund (less any Taxes paid, due, or owing with respect to the Settlement Fund and less any Notice and

Administration Costs actually incurred, paid, or payable) shall be returned as provided in Paragraph 35 above.

39. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff and any other Settlement Class Members against Defendants with respect to the Released Plaintiff's Claims. Accordingly, Plaintiff and its counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiff or defended by Defendants in bad faith or without a reasonable basis. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

40. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution), will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. While retaining their right to assert that the claims brought in the Action were meritorious, Plaintiff and Plaintiff's Counsel,

in any statement made to any media representative (whether for attribution or not), will not assert that the Action was defended in bad faith, nor will they deny that the Action was defended in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiff and its counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

41. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Parties (or their successors-in-interest).

42. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

43. If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

44. Without further Order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

45. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain

jurisdiction for the purpose of entering orders providing for the Fee and Expense Award, and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to eligible Settlement Class Members.

46. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

47. This Stipulation and its Exhibits constitute the entire agreement among the Parties concerning the Settlement and this Stipulation and its Exhibits. Each Party acknowledges that no other agreements, representations, warranties, or inducements have been made by any Party concerning this Stipulation or its Exhibits other than those contained and memorialized in such documents.

48. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

49. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and the Released Persons, and any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize. The Parties acknowledge and agree, for the avoidance of doubt, that the

Released Defendants' Persons and the Released Plaintiff's Persons are intended beneficiaries of this Stipulation and are entitled to enforce the Releases contemplated by the Settlement.

50. The construction, interpretation, operation, effect and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the internal laws of the State of Delaware without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

51. Any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in the Court.

52. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

53. All counsel and all other persons executing this Stipulation and any of the Exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

54. Plaintiff's Counsel and Defendants' Counsel agree to cooperate fully with one another to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required of this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement), and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

55. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiff or
Plaintiff's Counsel:

Bernstein Litowitz Berger & Grossmann LLP
Attn: Jeroen van Kwawegen, Esq.
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400
jeroen@blbglaw.com

Morris Kandinov LLP
Attn: Aaron T. Morris, Esq.
305 Broadway, 7th Floor
New York, New York 10007
(212) 431-7473
aaron@moka.law

If to GFIA Defendants:

Dechert LLP
Attn: David A. Kotler
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3500
David.kotler@dechert.com

Young Conaway Stargatt & Taylor LLO
Attn: Tammy L. Mercer
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600
tmercerc@ycst.com

If to the Trustee Defendants:

Vedder Price P.C.
Attn: Randall M. Lending
222 North LaSalle Street
Chicago, IL 60601
(312) 609-6500
rlending@vedderprice.com

Troutman Pepper Hamilton Sanders LLP
Attn: M. Duncan Grant
1313 Market Street, Ste. 5100
Wilmington, DE 19801
(302) 777-6500
Duncan.grant@troutman.com

56. Except as otherwise provided herein, each Party shall bear its own costs.

57. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts

performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

58. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

59. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 29, 2024.

[Signatures Beginning on Next Page]

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