

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

ORDER AND FINAL JUDGMENT

WHEREAS, a stockholder class action is pending in this Court captioned *JB and Margaret Blaugrund Foundation v. Guggenheim Funds Investment Advisors, LLC, et al.*, C.A. No. 2021-1094-NAC (the “Action”);

WHEREAS, (i) Plaintiff JB and Margaret Blaugrund Foundation (“Plaintiff”), on behalf of itself and the other members of the Settlement Class (as defined in Paragraph 4 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”) have entered into a Stipulation and Agreement of Settlement, Compromise, and Release dated March 29, 2024 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated April 9, 2024 (the “Scheduling Order”), this Court (i) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (ii) provided Settlement Class Members with the opportunity to object to the proposed Settlement, the proposed Plan of Allocation, and/or Plaintiff’s Counsel’s application for an award of attorneys’ fees and Litigation Expenses, including any application for an incentive award to Plaintiff (the “Fee and Expense Application”); and (iii) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on July 9, 2024 (the “Settlement Hearing”) to consider, among other things: (i) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to Plaintiff and the other

members of the Settlement Class, and should therefore be approved; (ii) whether a Judgment should be entered dismissing the Action with prejudice as against Defendants; and (iii) whether the Fee and Expense Application, including Plaintiff's application for an incentive award, should be approved; and

WHEREAS, due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Settlement Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this 9th day of July, 2024, as follows:

1. **Definitions**: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and each of the Settlement Class Members for purposes of the Action.

3. **Notice:** The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Scheduling Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: the pendency of the Action; the effect of the proposed Settlement (including the Releases to be provided thereunder), the proposed Plan of Allocation, and Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an incentive award; their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Plaintiff's Counsel's Fee and Expense Application, including Plaintiff's application for an incentive award; and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (v) satisfied the

requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

4. **Class Certification:** The Action is finally certified as a non-opt-out class action, for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), on behalf of the Settlement Class consisting of all holders of Fiduciary/Claymore Energy Infrastructure Fund (“FMO”) common shares of beneficial interest as of the closing of the merger of FMO with Kayne Anderson Energy Infrastructure Fund, Inc. (“KYN”) on March 7, 2022 (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. Plaintiff JB and Margaret Blaugrund Foundation is finally certified as the Class Representative for the Settlement Class. The law firms of Bernstein Litowitz Berger & Grossmann LLP and Morris Kandinov LLP (“Plaintiff’s Counsel”) are finally certified as Class Counsel for the Settlement Class.

5. Based on the record of the Action, the Court expressly and conclusively finds, solely for purposes of this Settlement, that: (i) the Settlement Class is so numerous that joinder of all members is impracticable, satisfying Court of Chancery Rule 23(a)(1); (ii) there are questions of law and fact common to the Settlement Class, satisfying Court of Chancery Rule 23(a)(2); (iii) the claims of Plaintiff are typical of the claims of absent Settlement Class Members in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories, satisfying Court of Chancery Rule 23(a)(3); (iv) Plaintiff and Plaintiff’s Counsel are fair and adequate representatives of the Settlement Class, satisfying Court of Chancery Rule 23(a)(4); (v) the prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of the Action as against

Defendants would influence the disposition of any pending or future identical suits, actions, or proceedings brought by other Settlement Class Members, satisfying Court of Chancery Rule 23(b)(1); and (vi) Defendants are alleged to have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole, satisfying Court of Chancery Rule 23(b)(2).

6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23(e), this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Released Claims; class certification; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to Plaintiff and the other members of the Settlement Class and in their best interests. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation, which this Judgment incorporates and makes a part hereof.

7. The Action and all of the claims asserted against Defendants in the Action are hereby dismissed with prejudice. The Parties shall bear their own fees, costs, and expenses, except as otherwise provided in the Stipulation and this Judgment.

8. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on the Parties and all Settlement Class Members, as well as their respective successors and assigns.

9. **Releases:** The Releases set forth in the Stipulation, together with the definitions contained in Paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(i) 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) 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.

10. Notwithstanding Paragraph 9 above, nothing in the Stipulation or in this Judgment shall in any way impair or restrict the rights of the Parties to enforce the terms of the Settlement pursuant to the Stipulation.

11. **Award of Attorneys' Fees and Expenses:** Plaintiff's Counsel are hereby awarded attorneys' fees in the amount of \$4,107,222.06, which sum the

Court finds to be fair and reasonable. Plaintiff's Counsel are also hereby awarded \$130,808.81 in payment of Litigation Expenses to be paid from the Settlement Fund, which sum the Court finds to be fair and reasonable. The Court-awarded attorney's fees and Litigation Expenses (the "Fee and Expense Award") shall be paid out of the Settlement Fund in accordance with the terms of the Stipulation.

12. Plaintiff JB and Margaret Blaugrund Foundation is hereby awarded an incentive award in the amount of \$100,000.00 (the "Incentive Award"). The Incentive Award shall be paid to Plaintiff from the Fee and Expense Award awarded under Paragraph 11 above.

13. No proceedings or court order with respect to the Fee and Expense Award or the Incentive Award shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

14. **Plan of Allocation of Net Settlement Fund:** The Court hereby finds and concludes that the formula for the calculation of payments from the Net Settlement Fund to eligible Settlement Class Members as set forth in the Plan of Allocation stated in the Notice provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund with due consideration having

been given to administrative convenience and necessity. No proceedings or court order with respect to approval of the Plan of Allocation shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

15. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any Exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

16. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Judgment shall be without prejudice to the rights of the Parties or the Settlement Class; and 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, as provided under the Stipulation.

17. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all Settlement Class Members for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and all other matters relating to the Action and the Settlement.

18. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final Judgment in the Action.



Vice Chancellor Nathan A. Cook