



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JB CAPITAL PARTNERS, L.P., )

Petitioner, )

v. )

C. A. No. 2020-0644-NAC

GAIN CAPITAL HOLDINGS, INC., a )

Delaware corporation, )

Respondent. )

JB CAPITAL PARTNERS, L.P., )

Plaintiff, )

v. )

C. A. No. 2022-0327-NAC

GLENN STEVENS, THOMAS )

BEVILACQUA, JOHN DOUGLAS )

RHOTEN, VANTAGEPOINT VENTURE )

ASSOCIATES IV, L.L.C., )

VANTAGEPOINT MANAGEMENT, INC., )

VANTAGEPOINT VENTURE )

ASSOCIATES IV, L.L.C., )

VANTAGEPOINT VENTURE PARTNERS )

IV (Q), L.P., VANTAGEPOINT VENTURE )

PARTNERS IV, L.P., VP NEW YORK )

VENTURE PARTNERS, L.P., )

VANTAGEPOINT VENTURE PARTNERS )

IV PRINCIPALS FUND, L.P., IPGL LTD. )

AND FOX & TROT LTD., )

Defendants. )

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

This Stipulation and Agreement of Settlement, Compromise, and Release, dated September 11, 2024 (the “Stipulation”), is entered into in the above-captioned actions by and among the following parties: (i) Petitioner and Plaintiff JB Capital Partners, L.P. (“Petitioner,” “Plaintiff” or “JB Capital”), on behalf of itself and the Class (as defined below); (ii) Respondent Gain Capital Holdings, Inc. (“Gain Capital”); (iii) Defendant Glenn Stevens (“Stevens”); (iii) Defendant Thomas Bevilacqua (“Bevilacqua”); (iv) Defendant John Douglas Rhoten (“Rhoten”); (v) Defendants VantagePoint Management, Inc., Vantage Point Venture Associates IV, L.L.C., VantagePoint Venture Partners IV (Q), L.P., VantagePoint Venture Partners IV, L.P., VP New York Venture Partners, L.P., and VantagePoint Venture Partners IV Principals Fund, L.P. (“VantagePoint Defendants”); and (vi) IPGL Ltd. and Fox & Trot Ltd. n/k/a IPGL No. 1 Ltd. (“IPGL Defendants,” and together with Gain Capital, Stevens, Bevilacqua, Rhoten, and VantagePoint Defendants, “Defendants”). Plaintiff and Defendants are hereinafter collectively referred to as the “Settling Parties”. This Stipulation is submitted under Court of Chancery Rule 23 and 8 *Del. C.* § 262(k).

Subject to the terms and conditions set forth herein and the approval of the Court,<sup>1</sup> the Settlement embodied in this Stipulation is intended to: (i) be a full and

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<sup>1</sup> All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings ascribed to them in Section I, Paragraph 1.

final disposition of the Appraisal Claims and Class Claims (defined below) asserted in *JB Capital Partners, L.P. v. Gain Capital Holdings, Inc.*, Del. Ch., C.A. No. 2020-0644-NAC (the “Appraisal Action”) and *JB Capital Partners, L.P. v. Glenn Stevens, et al.*, Del. Ch., C.A. No. 2022-0327-NAC (the “Class Action”, and collectively with the Appraisal Action, the “Actions”); (ii) state all the terms of the Settlement and the resolution of the Appraisal Claims in the Appraisal Action; (iii) state all the terms of the Settlement and the resolution of the Class Claims in the Class Action; (iv) fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Plaintiff’s Claims against Defendants and to release the Released Plaintiff’s Claims as to each and every one of the Released Defendant Parties; and (v) fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Defendants’ Claims against each and every one of the Released Plaintiff Parties.

WHEREAS:

A. On July 31, 2020, Golf Merger Sub I Inc. (“Merger Sub”), a wholly owned subsidiary of StoneX Group Inc. (formerly known as INTL FCStone Inc. (“INTL”)), merged with and into Gain Capital (the “Merger”). As a result of the Merger, Gain Capital became a wholly owned subsidiary of INTL, and each share of Gain Capital common stock not subject to appraisal was converted into the right to receive \$6.00 per share in cash (the “Merger Consideration”).

B. On July 31, 2020, JB Capital filed a Petition for Appraisal of Stock under 8 *Del. C.* § 262 (Trans. ID 65814324) in the Appraisal Action for a determination of the fair value of its shares of Gain Capital common stock.

C. On September 9, 2020, Gain Capital filed its Answer to Petition for Appraisal of Stock and Verified List in the Appraisal Action pursuant to 8 *Del. C.* § 262(f) (Trans. ID 65910730) and, on July 29, 2021, Gain Capital filed its Verified Amended List Pursuant to 8 *Del. C.* § 262(f) (Trans. ID 66808878) identifying dissenting stockholders (the “Dissenters”). A list of the Dissenters is attached hereto as Exhibit A.

D. Fourteen stockholders demanded appraisal for 3,816,334 shares of Gain Capital common stock. JB Capital and its affiliates demanded appraisal on 2,903,807 of those shares, or 76% of the dissenting shares. Except for 250,000 shares held by Sansone Partners (defined below), for which the demand for appraisal was withdrawn, none of the Dissenters have been paid any money by Gain Capital in connection with the Merger. The value of the remaining shares at issue held by Dissenters (3,566,334 shares) based on the value of the Merger Consideration is \$21,398,004.

E. From September 2020 to April 2022, JB Capital propounded extensive discovery in the Appraisal Action, including document requests to Gain Capital, and subpoenas to 13 non-parties. In response to these discovery requests and subpoenas,

Gain Capital and non-parties produced over 57,900 documents, composed of nearly 400,000 pages.

F. During the same time period, Gain Capital propounded discovery in the Appraisal Action, including document requests on JB Capital and a subpoena to a non-party. More than 5,000 pages of documents were produced in response to these requests.

G. On April 13, 2022, based on discovery obtained in the Appraisal Action, JB Capital filed a Verified Class Action Complaint (the “Complaint”) challenging the Merger and asserting claims for breaches of fiduciary duty and aiding and abetting (the “Class Claims”) in the Class Action.

H. On April 14, 2022, JB Capital moved to consolidate the Actions (the “Motion to Consolidate”) (Trans. ID 67480053).

I. On April 21, 2022, Gain Capital took the deposition of JB Capital through its representative, Alan Weber.

J. On May 11, 2022, VantagePoint Defendants moved to dismiss the Complaint in the Class Action (Trans. ID 67611306).

K. On May 18, 2022, Bevilacqua, Stevens, Rhoten and IPGL Defendants moved to dismiss the Complaint in the Class Action (Trans. IDs 67634419, 67634346 and 67626469, respectively).

L. On May 19, 2022, the Court stayed JB Capital’s Motion to Consolidate pending resolution of the motions to dismiss filed in the Class Action.

M. On August 9, 2022 and August 11, 2022, Chancellor Kathaleen Saint Jude McCormick entered Case Reassignment Orders, reassigning the Actions to Vice Chancellor Nathan A. Cook (Trans. IDs 67891252 and 67923356).

N. On July 13, 2022, Stevens, Bevilacqua, VantagePoint Defendants, Rhoten and IPGL Defendants filed Opening Briefs in support of their motions to dismiss in the Class Action (Trans. IDs 67819275, 67816791 and 67817364, respectively).

O. On August 17, 2022, dissenting stockholders Sansone Partners LP and Sansone Partners (QP), LP (collectively “Sansone Partners”) were dismissed from the Appraisal Action by Order of the Court, having withdrawn their demands for appraisal of 250,000 shares of Gain Capital (the “Sansone Partners Shares”) (Trans. ID 67942447).

P. On September 14, 2022, Plaintiff filed its Omnibus Answering Brief in Opposition to the motions to dismiss in the Class Action (Trans. ID 67938137).

Q. On October 20, 2022, Stevens, Bevilacqua, VantagePoint Defendants, Rhoten and IPGL Defendants filed Reply Briefs in further support of their motions to dismiss in the Class Action (Trans. IDs 68281716, 68274139 and 68280836, respectively).

R. A hearing on the motions to dismiss in the Class Action was held on May 2, 2023 (Trans. ID 69920757).

S. On August 30, 2023, the Court delivered its oral ruling on the motions to dismiss, and by Order dated August 31, 2023, denied Defendants' respective motions to dismiss in the Class Action (Trans. ID 70761299).

T. On October 11, 2023, the Court entered the Parties' Stipulation and Proposed Order Governing Defendants' Answer Deadline, tolling the time for Defendants to answer the Complaint in the Class Action until after mediation (Trans. ID 71062435).

U. On February 28, 2024, the Settling Parties engaged in a full-day mediation session before David Murphy, Esquire of Phillips ADR. Before the mediation, the Settling Parties exchanged confidential opening and reply mediation statements and exhibits, which addressed issues of both liability and potential damages. No settlement was reached during the initial mediation session.

V. On March 27, 2024, Plaintiff informed the Court, by letter, that mediation was unsuccessful (Trans. ID 72619136).

W. On April 9, 2024, the Court held a status conference with the parties to discuss the scheduling of trial.

X. On May 7, 2024, VantagePoint Defendants and Bevilacqua filed their Answers to the Complaint in the Class Action (Trans. IDs 72930261 and 72931290, respectively).

Y. On May 8, 2024, Stevens, Rhoten and IPGL Defendants filed their Answers to the Complaint in the Class Action (Trans. IDs 72999547, 72985948 and 73000710, respectively).

Z. On May 9, 2024, Mr. Murphy made a mediator's proposal to settle the Actions for \$55,000,000. On May 20, 2024, Mr. Murphy advised the Settling Parties that all parties had accepted his mediator's proposal.

AA. Once the Settling Parties began to prepare a settlement agreement memorializing the parties' agreed upon terms, however, a dispute arose concerning the allocation of the proposed settlement amount between the Appraisal Claims and the Class Claims.

BB. In attempting to resolve this dispute, Defendants revealed they or their insurers were funding \$24,101,280 and Gain Capital was funding \$30,898,720 of the \$55,000,000 global settlement. The amount that any of the Settling Parties would pay in a settlement was not previously disclosed to JB Capital or its counsel, Prickett, Jones & Elliott, P.A. ("Prickett Jones") prior to JB Capital's acceptance of the mediator's proposal. After learning Defendants and their insurers would pay up to \$24,101,280 to settle the Class Claims, JB Capital informed Defendants that it was



unwilling to settle the Class Claims for less than \$24,101,280 and was no longer willing to settle both actions for a total of \$55,000,000.

CC. On June 24, 2024, Respondent filed a Motion to Enforce Settlement (Trans. ID 73469600) (the “Motion to Enforce”). On that same day, Defendants filed a joinder to the motion. The motion sought to enforce a global settlement for a total of \$55,000,0000 based on the allocation reflected in this Stipulation.

DD. On July 1, 2024, the Court advised the parties that it would like to hold an in-person conference with Delaware counsel for the Settling Parties regarding Respondent’s Motion to Enforce Settlement.

EE. On July 16, 2024, Delaware counsel for the Settling Parties attended an in-person conference with the Court in chambers.

FF. In the weeks after the in-person conference with the Court, the Settling Parties continued to discuss a potential settlement. The parties ultimately agreed to settle the Appraisal Claims for the amount reflected in this Stipulation. As part of that agreement, JB Capital and Prickett Jones revised the terms of Prickett Jones’ engagement to reduce Prickett Jones’ contingency fee. The revised terms of Prickett Jones’ engagement only apply a 25% contingency fee on value recovered by Eligible Dissenters in excess of the value of the Merger Consideration plus pre-judgment interest Eligible Dissenters would have been entitled to as a matter of right under Delaware law if the Court ruled the fair value of the Dissenting Shares was equal to

the value of the Merger Consideration. This ensures Dissenters are not paying more in attorney fees than any Class member that did not Dissent on the Merger in connection with the Settlement.

GG. On August 19, 2024, the Settling Parties reached an agreement in principle to settle the Actions on the terms identified in the Motion to Enforce.

HH. JB Capital and Prickett Jones have conducted an investigation and pursued extensive discovery relating to the claims against each Defendant and the underlying events and transactions alleged in the Actions. Prickett Jones has analyzed the evidence adduced during its investigation and through the extensive discovery in the Appraisal Action described above and has also researched the applicable law with respect to the claims asserted in the Actions and the potential defenses thereto. Additionally, the mediation statements prepared and exchanged between the Settling Parties have provided JB Capital and Prickett Jones with a detailed basis upon which to assess the relative strengths and weaknesses of the Appraisal Claims and Class Claims, JB Capital's positions, and Defendants' positions in this litigation.

II. Based upon their investigation and prosecution of the Actions, JB Capital and Prickett Jones have concluded that the terms and conditions of the Settlement and this Stipulation are fair, reasonable, and adequate to JB Capital, the Dissenters and other members of the Class and in their best interests. Based on its

direct oversight of the prosecution of this matter, along with the input of Prickett Jones, JB Capital has agreed to settle the Appraisal Claims and Class Claims asserted in the Actions under the terms and provisions of this Stipulation, after considering: (i) the substantial benefits that JB Capital, Dissenters and the other members of the Class will receive from the resolution of the Appraisal Claims and Class Claims; (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 JB Capital of any infirmity in the Appraisal Claims and Class Claims asserted in the Actions.

JJ. Defendants deny all allegations of wrongdoing, fault, liability, or damage to JB Capital, Dissenters or to any other member of the Class, and further deny that JB Capital has asserted a valid claim as to any of them. Defendants further deny that they engaged in any wrongdoing or committed, aided or abetted any violation of law or breach of duty and believe that they acted properly, in good faith, and in a manner consistent with their legal and fiduciary duties and are entering into this Settlement and Stipulation solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation and to resolve each of the Released Plaintiff's Claims as against the Released Defendant Parties. 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 or of any fault or liability or wrongdoing, or damage whatsoever or any infirmity in the defenses that any of the Defendants have or could have asserted.

KK. The Settling Parties recognize that the Appraisal Claims and Class Claims in the Actions have been filed and prosecuted in good faith and defended by Defendants in good faith and further that the Settlement Payment to be paid, and the other terms of the Settlement as set forth herein, were negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

NOW THEREFORE, it is STIPULATED AND AGREED, by and among the Settling Parties that, subject to the approval of the Court under Court of Chancery Rule 23, 8 *Del. C.* § 262(k), and the other conditions set forth herein, for good and valuable consideration set forth herein and conferred on JB Capital, Dissenters and the Class, the sufficiency of which is acknowledged, the Appraisal Claims and Class Claims against Defendants shall be finally and fully settled, compromised, and dismissed, on the merits and with prejudice, and that the Released Plaintiff's Claims shall be finally and fully compromised, settled, released, discharged, and dismissed with prejudice against the Defendants and released as to the Released Defendant Parties, and that the Released Defendants' Claims shall be finally and fully

compromised, settled, released, discharged, and dismissed with prejudice against the Released Plaintiff Parties, in the manner set forth herein.

## **I. DEFINITIONS**

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

(a) “Administrative Costs” means all costs, expenses, and fees associated with administering or carrying out the terms of the Settlement for the Class Claims, other than the costs of providing notice of the Settlement to the Class. Administrative Costs are not part of the Fee and Expense Award.

(b) “Appraisal Claims” means claims for appraisal of Gain Capital stock under 8 *Del. C.* § 262 (“Section 262”) by any former Gain Capital stockholders, including without limitation JB Capital, named Petitioner in the Appraisal Action, and the Dissenters.

(c) “Appraisal Claims Allocation” means \$30,898,720.00, plus any interest that accrues on this amount while in the Appraisal Escrow Account.

(d) “Cede” means Cede & Co., Inc.

(e) “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or

consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including known claims and unknown claims, whether direct, individual, class, derivative, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, regulatory, common or other law or rule. For the avoidance of doubt, “Claims” do not include any Appraisal Claims.

(f) “Class” means:

All record holders and beneficial owners of Gain Capital common stock (except for Excluded Persons, as defined herein) who held such shares as of July 31, 2020 (the date of the Merger’s closing), together with their heirs, assigns, transferees, and successors-in-interest. All Excluded Persons are excluded from the Class. For the avoidance of doubt, the “Class” includes the Dissenters.

(g) “Class Claims” means the Claims that Plaintiff or any other member of the Class asserted in the Class Action on behalf of themselves and the Class, including Claims asserted in the Complaint on behalf of the Class. For the avoidance of doubt, “Class Claims” does not include any Appraisal Claims.

(h) “Class Claims Allocation” means \$24,101,280.00, plus any interest that accrues on this amount while in the Class Escrow Account.

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

(j) “Closing” means the consummation of the Merger on July 31, 2020.

(k) “Closing Security Position” means for each DTCC Participant, the number of shares of Gain Capital common stock reflected on the DTCC Allocation Report used by DTCC to pay the Merger Consideration, less any shares that were held by an Excluded Person at Closing.

(l) “Complaints” means the Petition for Appraisal of Stock filed in the Appraisal Action on July 31, 2020 (Trans. ID 65814323), and the Verified Complaint filed in the Class Action on April 13, 2022 (Trans. ID 67477583).

(m) “Court” means the Court of Chancery of the State of Delaware.

(n) “Defendants’ Counsel” means the law firms of DLA Piper LLP (US), Perkins Coie LLP, Landis Rath & Cobb LLP, Orrick, Herrington & Sutcliffe LLP, and Abrams & Bayliss LLP.

(o) “DTCC” means The Depository Trust & Clearing Corporation, including its subsidiary The Depository Trust Company.

(p) “DTCC Participants” means the DTCC participants to which DTCC distributed Merger Consideration.

(q) “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 22 of this Stipulation have been met and have occurred or have been waived.

(r) “Eligible Beneficial Owner” means the ultimate beneficial owner of Eligible Class Shares held of record by Cede at the time of the Closing, provided that no Excluded Person may be an Eligible Beneficial Owner.

(s) “Eligible Class Share” means each share of Gain Capital common stock held by Class Members at Closing. For the avoidance of doubt, Eligible Dissenting Shares and the Sansone Partners Shares are also Eligible Class Shares.

(t) “Eligible Dissenters” means Dissenters at Closing who have agreed to the terms of this Stipulation, which as of the filing of this Stipulation includes each Dissenter listed on Exhibit A with the exception of Sansone Partners and Quadre Investments LP.

(u) “Eligible Dissenting Share” means the number of shares owned by each Eligible Dissenter as set forth in Exhibit A to this Stipulation, for which the Dissenter has not withdrawn the Dissenter’s demand for appraisal for such shares under 8 *Del. C.* § 262.



(v) “Eligible Record Holder” means the record holder of any shares Eligible Class Shares, other than Cede, at the time of the Closing, provided that no Excluded Person may be an Eligible Record Owner.

(w) “Escrow Accounts” means the accounts that are maintained by the Escrow Agent and into which the Settlement Amount shall be deposited. The funds deposited into the Escrow Accounts shall be invested in instruments backed by the full faith and credit of the U.S. Government or agency thereof, or in money funds holding only instruments backed by the full faith and credit of the U.S. Government and the proceeds of these instruments shall be reinvested at their then-current market rates. The Escrow Agent shall place the Settlement Funds in two escrow accounts, one containing the Appraisal Claims Allocation amount (the “Appraisal Escrow Account”) and the other containing the Class Claims Allocation amount (the “Class Escrow Account”).

(x) “Escrow Agent” means AB Data, Ltd.

(y) “Excluded Persons” means the Defendants, including their Immediate Family, investors, partners, limited partners, legal representatives, heirs, estates, successors, or assigns and Gain Capital. For the avoidance of doubt, Dissenters are not Excluded Persons.

(z) “Fee and Expense Award” means an award to Prickett Jones of fees and expenses to be paid from the Class Claims Allocation, approved by the

Court and in full satisfaction of all claims for attorneys' fees and expenses that have been, could be, or could have been asserted by Prickett Jones or any other counsel or any Class Member with respect to the Class Claims. The Fee and Expense Award does not include Administrative Costs or Notice Costs, which are to be paid separately from the Class Claims Allocation.

(aa) "Final" means when referring to the Judgment or any other court order, (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 that is not withdrawn or dismissed, the date the issuance of a decision upholding the Judgment in all material respects is no longer subject to appeal, reconsideration, reargument or rehearing. Notwithstanding the above, any disputes or appeals relating solely to the amount, payment or allocation of attorneys' fees and expenses 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 affect the Judgment, or prevent, limit, delay or hinder entry of the Judgment.

(bb) "Immediate Family" means parents, children, stepchildren and spouses (a "spouse" shall mean a husband, a wife, or other state-recognized domestic relationship).

(cc) “Judgment” means the Order and Final Judgment to be entered by the Court in the Class Action in all material respects in the form attached as Exhibit E hereto.

(dd) “Merger” means the July 31, 2020 merger of Gain Capital and a wholly owned subsidiary of StoneX Group Inc.

(ee) “Net Class Settlement Fund” means the Class Claims Allocation minus Administrative Costs, Notice Costs and the Fee and Expenses Award.

(ff) “Notice” means the Notice of Pendency and Proposed Settlement of Appraisal Action and Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit D, which is to be made available to Class Members via internet distribution.

(gg) “Notice Costs” means all costs, expenses and fees associated with providing notice of the Settlement to the Class. Notice Costs are not part of the Fee and Expense Award.

(hh) “Plan of Allocation” means the plan of allocation of the Settlement Fund set forth in Section III.

(ii) “Postcard Notice” means the Postcard Notice of Pendency and Proposed Settlement of Appraisal Action and Stockholder Class Action, Settlement Hearing, and Right to Appear substantially in the form attached hereto as Exhibit C.

(jj) “Released Defendant Parties” means (i) Defendants; (ii) the Immediate Family of any Defendant who is a natural person; (iii) Defendants’ past or present, direct or indirect, affiliates, members, partners, partnerships, investment managers, advisors and funds, subsidiaries, parents, predecessors, successors, and related parties (collectively, “Affiliates”); (iv) all past or present officers, directors, employees, associates, agents, advisors, members, partners, shareholders, experts, financial or investment advisors, insurers, attorneys (including without limitation Defendants’ Counsel), successors, and assigns of Defendants and their respective Affiliates; (v) all artificial persons, firms, trusts, foundations, corporations, or other entities in which any of the Defendants have a financial interest; and (vi) the legal representatives, heirs, executors, administrators, predecessors, successors, and assigns of any of the foregoing.

(kk) “Released Claims” means Released Plaintiff’s Claims and Released Defendants’ Claims.

(ll) “Released Defendants’ Claims” means any and all Claims, including Unknown Claims, that have been or could have been asserted in the Actions, or in any court, tribunal, forum or proceeding, by Defendants or any of their respective successors and assigns against any of the Released Plaintiff Parties, that are based upon, arise out of, relate in any way to, or involve, directly or indirectly (i) the Merger, (ii) any agreement, transaction, occurrence, conduct, or fact alleged

or set forth in the Actions, or (iii) the commencement, prosecution, defense, mediation or settlement of the Class Claims and Appraisal Claims. The Defendants' Released Claims shall not include (i) any claims to enforce this Stipulation, or (ii) any claims that any of the Defendants may have against their respective insurers under Defendants' insurance policies.

(mm) "Released Plaintiff Parties" means Plaintiff, Dissenters, and all other Class Members, and their respective past and present trustees, officers, directors, employees, agents, affiliates, insurers, investors, partners, advisors, experts and attorneys (including Prickett Jones).

(nn) "Released Plaintiff's Claims" means the Class Claims, Appraisal Claims and any and all Claims, including Unknown Claims, that Plaintiff, Dissenters or any other member of the Class ever had or now has, directly, representatively, or derivatively, that are based upon, arise out of, relate in any way to, or involve, directly or indirectly: (i) the Merger; (2) any agreement, transaction, occurrence, conduct, or fact alleged or set forth in the Action; or (3) the commencement, prosecution, defense, mediation, or settlement of the Class Claims and Appraisal Claims; provided that, only Eligible Dissenters (*i.e.*, that have agreed to the terms of this Stipulation) shall be deemed to have released rights under 8 *Del. C.* § 262. The Released Plaintiff's Claims shall not include claims to enforce this Stipulation.

(oo) “Releases” means the releases set forth in Paragraphs 14-17 of this Stipulation.

(pp) “Scheduling Order” means a scheduling order for the proceedings before this Court regarding the Settlement, substantially in the form attached hereto as Exhibit B.

(qq) “Settlement” means the settlement between Settling Parties on the terms and conditions set forth in this Stipulation.

(rr) “Settlement Administrator” means AB Data, Ltd., the settlement administrator selected by Plaintiff and Prickett Jones to administer the Settlement.

(ss) “Settlement Amount” means the Class Claims Allocation plus the Appraisal Claims Allocation.

(tt) “Settlement Fund” means the principal of Settlement Amount in cash, plus any interest that may accrue on that sum in the Escrow Accounts.

(uu) “Settlement Hearing” means the hearing to be set by the Court under Court of Chancery Rule 23 and 8 *Del. C.* § 262(k) to consider, among other things, final approval of the Settlement.

(vv) “Taxes” means: (i) all federal, state, and local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred in connection with determining the amount of, and paying, any taxes

on any income earned by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(ww) “Unknown Claims” means any (i) Released Plaintiff’s Claims that the Released Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff’s Claims, and (ii) Released Defendants’ Claims that any Defendant or any of the Released Defendant Parties does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants’ Claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. The Settling Parties acknowledge, and the other Class Members by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Settling Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Settling Parties also acknowledge, and the other Class Members by operation of law are deemed to acknowledge, that the inclusion of “Unknown Claims” in the definitions of the Released Plaintiff’s

Claims and Released Defendants' Claims is separately bargained for and is a key element of the Settlement.

## **II. SETTLEMENT CONSIDERATION**

2. In consideration for the full and final release, settlement, and discharge of all Released Plaintiff's Claims against the Released Defendant Parties, the Settling Parties have agreed to the following consideration:

(a) Gain Capital shall cause the Appraisal Claims Allocation to be deposited into the Appraisal Escrow Account.

(b) Defendants shall cause their respective portions of the Class Claims Allocation to be deposited into the Class Escrow Account.

(c) The Appraisal Allocation shall be paid into the Appraisal Escrow Account within two (2) business days after the later of: (A) the execution of this Stipulation or (B) delivery to Gain Capital's and Defendants' Counsel of wiring instructions and a signed IRS Form W-9 reflecting a valid taxpayer identification number for the Appraisal Escrow Account.

(d) The Class Claims Allocation shall be paid as follows:

(i) Two-hundred and fifty-thousand dollars (\$250,000) shall be paid into the Class Escrow Account within two (2) business days after the later of: (A) the entry of the Scheduling Order or (B) delivery to Gain Capital's and



Defendants' Counsel of wiring instructions and a signed IRS Form W-9 reflecting a valid taxpayer identification number for the Class Escrow Account.

(ii) The remainder of the Class Claims Allocation shall be paid into the Class Escrow Account no later than sixty (60) days after the Notice Date, as that date is defined in the Scheduling Order.

(e) All funds held in the Escrow Accounts shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed pursuant to this Stipulation or further order(s) of the Court.

(f) The Settlement Fund shall be administered by the Settlement Administrator and the Escrow Agent and shall be used: (i) to pay all Administrative Costs and Notice Costs; (ii) to pay any Fee and Expense Award; (iii) to pay any Taxes; (iv) to pay the Appraisal Claims Allocation to Eligible Dissenters; and (v) following the payment of (i), (ii), (iii) and (iv) herein, for subsequent disbursement of the Net Class Settlement Fund to the Class Members as provided herein and the Plan of Allocation as approved by the Court.

(g) Notwithstanding the fact that the Effective Date has not yet occurred, Plaintiff's Counsel may pay from the Settlement Fund, without order of the Court, Administrative Costs and Notice Costs up to the sum of \$250,000. Before the Effective Date, Administrative Costs and Notice Costs in excess of \$250,000

may be paid from the Settlement Fund only with prior approval of the Court and Defendants. In the event that the Settlement does not become Final, Administrative Costs and Notice Costs shall not be returned or repaid to any person or entity who or which funded the Settlement Fund. After the Effective Date, Administrative Costs or Notice Costs may be paid as incurred pursuant to an administrative order by the Court.

(h) For the avoidance of doubt: (i) neither Plaintiff, the Class Members, nor Plaintiff's Counsel shall seek any monetary relief as a condition of the Settlement other than payment of the Settlement Amount in accordance with ¶ 2(a)-(d) of this Stipulation; and (ii) the Released Defendant Parties shall have no liability or responsibility whatsoever in connection with the Settlement, the Settlement Fund, the investment or distribution of the Settlement Fund, the Net Class Settlement Fund, the administration or calculation of any payment from the Net Class Settlement Fund, the Plan of Allocation, Administrative Costs, Taxes, Fee and Expense Award or acts or omissions of the Settlement Administrator or the Escrow Agent, or the Action, except as specifically set forth herein.

### **III. DISTRIBUTION OF THE SETTLEMENT FUND**

3. The Plan of Allocation proposed in this Stipulation is a necessary term of the Settlement and this Stipulation and is a condition of the Settlement.

4. Subject to the approval of the Court, Plaintiff shall retain the Settlement Administrator to oversee the administration of the Settlement and distribution of the Settlement Fund.

5. Upon or after the Effective Date, the Settlement Administrator shall (i) return to Gain Capital \$8.66 per share held by each Dissenter who did not agree to the terms of this Stipulation (*i.e.*, the non-Eligible Dissenters and non-Eligible Dissenting Shares); (ii) cause the remaining Appraisal Claims Allocation, plus any accrued interest on this amount, minus legal fees and expenses owed in accordance with their respective engagement agreements with Prickett Jones, to be paid to the Eligible Dissenters *pro rata* based on the number of Eligible Dissenting Shares each Eligible Dissenter held; and (iii) pay any such legal fees and expenses to Prickett Jones.

6. As soon as practicable after the Effective Date, the Settlement Administrator shall cause the Net Class Settlement Fund to be paid to the Class Members *pro rata* based on the number of Eligible Class Shares each Class Member held.

a. Record Holders: With respect to Eligible Class Shares held of record at Closing other than by Cede, as nominee for DTCC, the Settlement Administrator will distribute the *pro rata* amount of the Net Class Settlement Fund attributable to each Eligible Record Holders by paying directly to

each Eligible Record Holder their *pro rata* portion of the Net Class Settlement Fund, based upon the number of Eligible Class Shares held.

b. Eligible Beneficial Holders who did not Dissent (i.e., paid Merger Consideration through DTCC): With respect to Eligible Class Shares held of record at Closing by DTCC through its nominee Cede, the Settlement Administrator shall cause the relevant portion of the Net Class Settlement Fund to be allocated first by distributing that portion of the Net Class Settlement Fund among the DTCC Participants by paying each DTCC Participant their *pro rata* portion of the Net Class Settlement Fund based upon their respective Closing Security Position set forth in the DTCC Information, after accounting for any holdings held through such DTCC Participant for the benefit of Excluded Persons and any Eligible Beneficial Holder that will be paid pursuant to Paragraph 6.c. below. The Administrator shall further take all appropriate steps to instruct DTCC Participants to distribute the portion of the Net Class Settlement Fund that they receive to the Eligible Beneficial Holders on a *pro rata* basis in accordance with each Eligible Beneficial Owner's "Closing Beneficial Ownership Position," which means, for each Eligible Beneficial Owner, the number of shares of Gain Capital common stock beneficially owned by such Eligible Beneficial Owner as of Closing, for which the Eligible Beneficial Owner received payment of the Merger Consideration, in a similar manner to that in which the DTCC Participants paid the Merger

Consideration in connection with the Merger. Defendants shall make commercially reasonable efforts to cooperate with Prickett Jones and the Settlement Administrator to obtain information from the Excluded Persons and, as applicable, the relevant DTCC Participants in order to ensure that no portion of the Net Class Settlement Fund is distributed to any Excluded Person, including information sufficient (a) to identify the number of shares of Gain Capital common stock beneficially owned by each Excluded Person as of closing, (b) to identify the DTCC Participant or non-Cede record holder through which such shares were held as of Closing, and any relevant DTCC Participant to identify and exclude from payment all shares of Gain Capital common stock beneficially owned by each Excluded Person as of closing (collectively, the “Excluded Person Information”).

c. Eligible Beneficial Holders who Dissented (i.e., not paid Merger Consideration through DTCC): With respect to Eligible Class Shares held of record at Closing by DTCC through its nominee Cede for which statutory appraisal was demanded and were not exchanged for Merger Consideration at the time of the Merger, the Settlement Administrator shall distribute the portion of the Net Class Settlement Fund to such Eligible Beneficial Holders on a *pro rata* basis based on the number of shares set forth on Exhibit A to this Stipulation.

7. If there is any balance remaining in the Net Class Settlement Fund six (6) months after distribution of the Net Class Settlement Fund (whether by reason of

tax refunds, uncashed checks, amounts returned by Excluded Persons who erroneously receive settlement payments, or otherwise), the Settlement Administrator shall, if feasible, distribute such balance in the same manner as the distribution set forth in Paragraph 6 of this Stipulation. If the cost of making such a further distribution or distributions is unreasonably high relative to the amount remaining in the Net Class Settlement Fund, Prickett Jones may file a motion for an administrative order instructing the Settlement Administrator to distribute any balance remaining in the Net Class Settlement Fund, after provision for all anticipated expenses, to the Delaware Combined Campaign for Justice. Neither the Released Defendant Parties nor their indemnitors or insurers shall have any reversionary interest in the Net Class Settlement Fund, or any part of the Settlement Fund other than as set forth in Paragraph 5 of this Stipulation.

8. Plaintiff, Defendants, Dissenters the other Released Defendant Parties, and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund, the Appraisal Claims Allocation, the Class Claims Allocation or the Net Class Settlement Fund, the determination, administration, or calculation of any payment from the Settlement Fund or Net Class Settlement Fund, any nonperformance of the Settlement Administrator or a nominee holding shares on behalf of an Eligible Class Member, the payment or withholding

of Taxes (including interest and penalties) owed by the Settlement Fund or any allocation thereof, of any losses incurred in connection therewith.

9. All proceedings with respect to the administration of the Settlement and distribution of the Settlement Fund shall be subject to the exclusive jurisdiction of the Court.

#### **IV. COOPERATION IN PROVIDING NOTICE OF THE SETTLEMENT**

10. For purposes of providing notice of the Settlement to potential Class Members, and Distributing the Net Class Settlement Fund, within three (3) business days of the execution of this Stipulation, Gain Capital will provide or cause to be provided to Prickett Jones, at no cost, in an electronically-searchable form, such as Excel, the following information to the extent that such information is in Gain Capital's possession, custody, or control, or available to Gain Capital through other reasonable means (the "Merger Records"):

(a) Gain Capital agrees to provide from its transfer agent the names, mailing addresses and, if available, email addresses of all record holders of Gain Capital common stock who held shares of Gain Capital common stock at the Closing and therefore received or were entitled to receive the Merger Consideration, other than the Excluded Persons (the "Merger Record Holders"), and the number of shares of Gain Capital common stock held by the Merger Record Holders at the Closing

and for which the Merger Record Holders received or were entitled to receive the Merger Consideration; and

(b) Gain Capital agrees to authorize DTCC to provide the Settlement Administrator with an allocation or position report generated by the DTCC or report of such other similar entity in anticipation of the Merger to facilitate the allocation of the Merger Consideration (the “DTCC Allocation Report”), which may include, for each DTCC Participant, the number of shares of Gain Capital common stock reflected on the DTCC Allocation Report or other similar entity to distribute the Merger Consideration (collectively, “DTCC Information”).

11. In addition to the information to be provided under Paragraph 10 above, Gain Capital, at the request of Plaintiff, and at no cost, shall make commercially reasonable efforts to obtain and provide such additional information as may be required to distribute the Net Class Settlement Fund to Class Members and to ensure that the Net Class Settlement Fund is paid only to Class Members and not to Excluded Persons.

12. Defendants and any other Excluded Person 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, so long as such others are not an otherwise Excluded Person), or any additional amount based on any claim relating to the fact that



Settlement proceeds are being received by any other former Gain Capital stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

## **V. SCOPE OF THE SETTLEMENT**

13. Upon entry of the Judgment, and subject to the occurrence of the Effective Date, the Appraisal Claims and Class Claims in the Actions shall be dismissed with prejudice as against all of the Defendants without the award of any damages, costs, or fees or the grant of further relief except for the payments provided in this Stipulation.

14. Upon the Effective Date, Plaintiff, Dissenters, and all other Class Members, on behalf of themselves and their successors and assigns, shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Defendant Parties from and with respect to every one of the Released Plaintiff's Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff's Claims against any of the Released Defendant Parties. The Released Defendants Parties are intended third party beneficiaries of the release in this Paragraph 14.

15. Upon the Effective Date, each of Defendants, on behalf of themselves and their successors and assigns, shall thereupon be deemed to have fully, finally

and forever, released, settled and discharged the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties. The Released Plaintiff Parties are intended third party beneficiaries of the release in this Paragraph 15.

16. The contemplated releases given by the Settling Parties in this Stipulation extend Released Claims that the Settling Parties did not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this Stipulation.

17. Regarding the Released Claims, the Settling Parties shall be deemed to have waived all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of Unknown Claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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.

## **VI. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL**

18. As soon as practicable after execution of this Stipulation, Plaintiff shall (i) apply to the Court for entry of the Scheduling Order in the form attached hereto as Exhibit B, providing for, among other things: (a) the mailing of the Postcard Notice, substantially in the form attached hereto as Exhibit C; (b) the publication of a settlement website where Class Members can access and download the Notice, substantially in the form attached hereto as Exhibit D; and (c) the scheduling of the Settlement Hearing to consider: (1) the proposed Settlement, (2) the request that the Judgment be entered in all material respects in the form attached hereto as Exhibit E, (3) Prickett Jones's application for a Fee and Expense Award, and (4) any objections to any of the foregoing; and (ii) take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order.

19. Solely for the purposes of the Settlement and for no other purpose, the Settling Parties agree to: (a) certification of the Class as a non-opt-out class under Court of Chancery Rules 23(a) and 23(b)(1) and (b)(2); (b) appointment of JB Capital as class representative on behalf of the Class; and (c) appointment of Prickett Jones as counsel for the Class. The certification of the Class shall be binding only with respect to the Settlement and this Stipulation.

(a) The Settling Parties agree and acknowledge that Defendants' agreement to the Settlement is expressly conditioned on the certification of a non-

opt-out class such that the Settlement and the Releases will apply to all persons covered by the Class definition in Paragraph 1(f) and all of the Released Plaintiff's Claims.

(b) In the event that the Settlement and this Stipulation is terminated under its terms or the Effective Date fails to occur, the certification of the Class shall be deemed vacated and the Actions shall proceed as though the Class had never been certified.

20. The Settling Parties and their respective counsel, both individually and collectively, shall take all reasonable and appropriate steps to obtain the certification of a non-opt-out class, approval of the Settlement, and Final entry of the Judgment in all material respects in the form attached hereto as Exhibit E.

21. Notice shall be provided in accordance with the Scheduling Order. Defendants shall cooperate with Plaintiff in providing Notice, including, but not limited to, Gain Capital providing the Class Member Records, the Merger Records and the DTCC Information in accordance with Section IV above. For the avoidance of doubt, in the event that the Settlement is terminated under the terms of this Stipulation, all Notice and Administrative Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, or any of the other Released Defendant Parties, or any other person or entity who or which paid any portion of the Settlement Payment.

## **VII. CONDITIONS OF SETTLEMENT**

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

(a) The Court has entered the Scheduling Order in all material respects in the form attached hereto as Exhibit B;

(b) The Court has entered the Judgment in all material respects in the form attached hereto as Exhibit E;

(c) The Judgment has become Final; and

(d) The full amount of the Settlement Payment has been paid in accordance with Paragraph 2(a)-(d) of this Stipulation.

23. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants or any other person or entity who or which paid any portion of the Settlement Payment in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

## **VIII. ATTORNEYS' FEES AND EXPENSES**

24. Prickett Jones will apply for a Fee and Expense Award in an amount not to exceed 25% of the Class Claims Allocation (\$6,025,320) (the "Fee and Expense Application"). Defendants agree that they shall take no position as to the Fee and Expense Application. Prickett Jones's Fee and Expense Application is not

the subject of any agreement between the Settling Parties other than what is set forth in this Stipulation. The Released Defendant Parties shall have no responsibility for or liability whatsoever with respect to the allocation, award, or payment of any Fee and Expense Award to Prickett Jones. The Fee and Expense Award shall be payable solely from the Class Claims Allocation.

25. An amount equal to the Fee and Expense Award shall be payable to Prickett Jones from the Class Claims Allocation immediately following entry of the Judgment by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. In the event that (i) this Stipulation is disapproved, canceled, or terminated pursuant to its terms or the Effective Date otherwise fails to occur for any reason, or (ii) the Fee and Expense Award is disapproved, reduced, reversed or otherwise modified by Final court order, then Prickett Jones shall, within fifteen (15) business days after Prickett Jones receives notice of any such event in (i) or (ii) above, return to the Settlement Administrator Account, as applicable, either the entirety of the Fee and Expense Award or the difference between the attorneys' fees and expenses awarded by the Court in the Fee and Expense Award on the one hand, and any attorneys' fees and expenses ultimately and finally awarded on appeal, further proceedings on remand or otherwise on the other hand.

26. The disposition of the Fee and Expense Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee and Expense Application may be considered separately from 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 any of the Settling Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Plaintiff's Claims. Final resolution of the Fee and Expense Application shall not be a condition to the dismissal, with prejudice, of the Class Claims as to Defendants or effectiveness of the releases of the Released Plaintiff's Claims.

#### **IX. STAY PENDING FINALITY OF THE SETTLEMENT**

27. Each Settling Party agrees not to initiate any other proceedings related to the subject matter of the Actions against any other Settling Parties other than those incident to the Settlement itself pending the occurrence of the Effective Date. The Settling Parties also agree to use their reasonable best efforts to seek the stay and dismissal of, and to oppose entry of, any interim or final relief in favor of any Class Member in any other proceedings which challenge the Settlement or the Merger or otherwise assert or involve the commencement or prosecution of any Released

Plaintiff's Claim, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

28. The Settling Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, (i) Plaintiff and all Class Members are barred and enjoined from commencing, prosecuting, instigating, continuing or in any way participating in the commencement or prosecution of any Released Plaintiff's Claim, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party and (ii) all proceedings, discovery, or other activity in the Actions (including any proceedings, discovery, or activity with respect to the Appraisal Claims) shall be stayed. The Released Defendant Parties are intended third party beneficiaries of, and entitled to enforce as third-party beneficiaries, this Section IX and any order issued in accordance with it.

## **X. TAXES**

29. The Settling Parties agree that the Class Claims Allocation together with all interest earned on it is intended to be a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section X, including, if necessary, the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be



made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. Gain Capital shall provide, or shall cause to be provided, the statement described in Treas. Reg. § 1.468B-3(e) to Prickett Jones within the time period required thereunder.

30. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 29 above) shall be consistent with this Section X and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Class Claims Allocation shall be paid out of income earned by the Class Claims Allocation, and that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Appraisal Claims Allocation shall be paid out of the income earned by the Appraisal Claims Allocation.

31. All taxes owed on income earned by the Appraisal Claims Allocation or the Class Claims Allocation shall be paid in accordance with Paragraph 30 without further order of the Court. Any tax returns prepared for the Appraisal Claims

Allocation or the Class Claims Allocation (as well as the election set forth herein) shall be consistent with this Section X and in all events shall reflect that all taxes on the income earned by the Appraisal Claims Allocation or the Class Claims Allocation shall be paid as provided herein. Any costs for the preparation of applicable tax returns for the Appraisal Claims Allocation shall be paid from the Appraisal Claims Allocation; and any costs for the preparation of applicable tax returns for the Class Claims Allocation shall be paid from the Class Claims Allocation. Defendants and the Released Defendant Parties shall have no liability whatsoever for any taxes in connection with or related directly or indirectly to the Settlement Fund, including without limitation any liability for income taxes owed by any Class Member by virtue of their receipt of payment from the Settlement Fund.

32. Defendants and their counsel agree to cooperate with Prickett Jones, the Settlement Administrator, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section X.

#### **XI. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION; EFFECT OF PARTIAL APPROVAL OF SETTLEMENT**

33. If either (i) the Court finally refuses to enter the Judgment in any material respect or alters the Judgment in any material respect prior to entry, or (ii) the Court enters the Judgment but on or following appellate review, the Judgment is modified or reversed in any material respect, the Settlement and this Stipulation shall be canceled and terminated, and the Settlement Fund shall be returned to Defendants

pro rata in accordance with their funding contributions within thirty (30) days subject to paragraphs 2(g) and 21, unless each of the Settling Parties to this Stipulation, within ten (10) business days from receipt of such ruling, agrees in writing with the other Settling Parties hereto to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Settling Parties in their sole judgment and discretion may agree. In addition to the foregoing, Plaintiff shall have the right to cancel and terminate the Settlement and this Stipulation in the event that the Settlement Payment is not timely paid in accordance with Paragraph 2 above. For purposes of this paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. Neither a modification nor a reversal on appeal of the amount of fees, costs and expenses awarded by the Court to Prickett Jones shall be deemed a material modification of the Judgment or this Stipulation.

34. If this Stipulation is disapproved, canceled, or terminated under its terms or the Effective Date otherwise fails to occur, (i) the Settling Parties shall be deemed to have reverted to their respective positions in the Actions immediately before May 20, 2024, they shall negotiate a new trial schedule in good faith, and they shall proceed as if the Stipulation had not been executed and the related orders had not been entered; (ii) all of their respective claims and defenses as to any issue in the Actions shall be preserved without prejudice in any way; and (iii) the

statements made in connection with the negotiations of this Stipulation shall not be deemed to prejudice in any way the positions of any of the Settling Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Settling Party, shall not be used or entitle any Settling Party to recover any fees, costs, or expenses incurred in connection with the Action except to the extent necessary to justify additional expenditures for any potential future fee application in the event of the failure of the Settlement, and neither the existence of this 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 or judicial proceeding, except to the extent that reference to the existence of the Stipulation is necessary in the event of the failure of the Settlement to justify a request for a modified scheduling order and trial date in the Action.

## **XII. MISCELLANEOUS PROVISIONS**

35. 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.

36. 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 by or 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 Defendant Parties under this Stipulation, in which event the releases and Judgment shall be null and void, and the Settling Parties shall be restored to their respective positions in the Actions as provided 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 Costs and Administrative Costs actually incurred, paid or payable) shall be returned as provided in Paragraph 2(g).

37. 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 Settling Parties (or their successors-in-interest).

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

39. 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.

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

41. 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 exclusive jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Prickett Jones and enforcing the terms of this Stipulation, including the distribution of the Settlement Fund.

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

43. This Stipulation and its exhibits constitute the entire agreement among the Settling Parties concerning the Settlement and this Stipulation and its exhibits. Each Settling Party acknowledges that no other agreements, representations, warranties, or inducements have been made, and it is not relying upon any other agreements, representations, warranties, or inducements (or the accuracy or completeness thereof), by any Settling Party concerning this Stipulation or its exhibits other than those contained and memorialized in such documents.

44. This Stipulation may be executed in one or more counterparts, including 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.

45. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including Released Plaintiff Parties and Released Defendant Parties, and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate or reorganize. The Settling Parties acknowledge and agree, for the avoidance of doubt, that the Released Defendant Parties and the Released Plaintiff Parties are intended beneficiaries of this Stipulation and are entitled to enforce the releases contemplated by the Settlement.

46. This Stipulation, all documents necessary to effectuate this Stipulation, and any disputes arising from or relating directly or indirectly to this Stipulation—including (without limitation) concerning the construction, interpretation, operation, effect and validity of this Stipulation—shall be governed, construed, performed, and enforced in accordance with the laws of the State of Delaware. without regard to any state’s principles, policies, or provisions governing choice of law that would require a different jurisdiction’s law to apply.

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

48. This Stipulation shall not be construed more strictly against one Settling 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 Settling Parties, it being recognized that it is the result of arm’s-length negotiations between the Settling Parties and that all

Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

49. 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 under the Stipulation to effectuate its terms.

50. Counsel to the Settling Parties 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.

51. Plaintiff and Prickett Jones represent and warrant that Plaintiff is a Dissenter and Class Member and that none of Plaintiff's claims or causes of action referred to in this Stipulation have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

52. If any Settling Party is required to give notice to another Settling 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 Prickett  
Jones:                   PRICKETT, JONES & ELLIOTT, P.A.  
                                  Marcus E. Montejo, Esquire  
                                  1310 King Street  
                                  Wilmington, Delaware 19801  
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If to Defendants:                   DLA PIPER LLP (US)  
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*[Signature Pages Follow]*

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Dated: September 11, 2024

**Multi-Case Filing Detail:** The document above has been filed and/or served into multiple cases, see the details below including the case number and name.

## Transaction Details

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**Court:** DE Court of Chancery Civil Action      **Document Type:** Stipulation for Compromise & Settlement

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## Case Details

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<b>Case Number</b>	<b>Case Name</b>
2020-0644-NAC	CONF ORD JB Capital Partners, L.P. v. Gain Capital Holdings, Inc.
2022-0327-NAC	CONF ORD / JB Capital Partners, L.P. v. Glenn Stevens, et al.