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8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) CRD Nos. 166408, 5306819, 5519126  
13 )  
14 THE COMMISSIONER OF FINANCIAL ) SETTLEMENT AGREEMENT  
15 PROTECTION AND INNOVATION, )  
16 )  
17 Complainant, )  
18 v. )  
19 )  
20 CURVE CAPITAL LLC, an entity, )  
21 KEVIN MARTIN, an individual; and RYAN )  
22 MARTIN an individual, )  
23 )  
24 Respondents. )  
25 )

21 This Settlement Agreement is entered between Complainant, the Commissioner of the  
22 California Department of Financial Protection and Innovation (Commissioner), and Respondents,  
23 Curve Capital LLC, Kevin Martin, and Ryan Martin (collectively Curve Capital or Martins), and is  
24 made with respect to the following facts:

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**I.**  
**RECITALS**

A. The Commissioner has jurisdiction over the licensing and regulation of investment advisers in California under the Corporate Securities Law of 1968 (CSL) <sup>1</sup> (Corporations Code section 25000 et seq.).

B. Curve Capital LLC (Curve Capital) is a California limited liability company formed on April 17, 2017, with its principal place of business located at 7545 Irvine Center Drive, Suite 200, Irvine, California, 92618.

C. On January 14, 2013, the Commissioner issued an investment adviser certificate Central Registration Depository No. 166408 (CRD) to Curve Capital pursuant to section 25230 of the CSL.

D. Kevin Joseph Martin is the Manager of Curve Capital and has been licensed by the Commissioner as an investment adviser representative since December 17, 2012, with CRD No. 5306819.

E. Ryan Martin is the Manager of Curve Capital and has been licensed by the Commissioner as an investment adviser representative since August 2016, with CRD No. 5519126.

F. Curve Capital Partners, LP (Curve LP) is, or was, a California limited liability company formed in or about November 28, 2018, with its principal place of business located at 7545 Irvine Center Drive, Suite 200, Irvine, California, 92618. Curve LP serves as a corporate account that is identical to an unregistered investment pool, hedge fund or pooled investment fund. Curve LP was, at all relevant times, managed by Curve Capital and Martins (hereinafter collectively, Respondents).

G. In or about January 2019, and the Commissioner commenced a routine regulatory examination of the books and records of Curve Capital pursuant to section 25241 (2019 Examination), which revealed several violations, including:

- i. Willfully failing to Comply with Safeguard Requirements, in violation of section 25235 and § California Code of Regulations, title 10, section 260.237, subdivisions (a)(1)(5)(A)(B)(6).

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<sup>1</sup> All further references are to the Corporations Code unless otherwise indicated.

- 1                   ii. Willfully failing to meet the minimum net worth requirements, in violation of
- 2                   section 25241 and California Code of Regulations, title 10 § 260.237.2,
- 3                   subdivisions (a)(c)(d)(e).
- 4                   iii. Willfully failing to file an Annual Report in violation of California Code of
- 5                   Regulations, title 10, section 260.241.2, subdivisions (d)(2)(3)(4).
- 6                   iv. Willfully failing to maintain books and records, violation of section 25241,
- 7                   subd. (a). and California Code of Regulations, title 10, section 260.241.3,
- 8                   subdivisions (a)(3)(7).
- 9                   v. Engaging in activities that do not promote fair, equitable and ethical principles
- in violation of section 25238 and California Code of Regulations, title 10,
- section 260.238 subdivisions (a) (h) and (n).

10           H.       In about May through December 2020, the Commissioner received complaints from

11 three California investors, D.H., W. O and B. M., who allegedly incurred losses in investment

12 accounts managed by Respondents.

13           I.       On December 28, 2020, the Commissioner commenced a non-routine examination of

14 the books and records of Respondents (2020 Examination) which disclosed several violations of the

15 CSL by Respondents, some of which were repeat violations from the 2019 Exam.

16           J.       Based on the findings on the 2019 and 2020 Examinations, the Commissioner

17 determined that Respondents engaged in the investment adviser business in violation of the CSL

18 provisions referenced herein in paragraph G.

19           K.       On March 23, 2023, the Commissioner issued an Order directing Respondents to

20 discontinue violating provisions of the CSL and CCR pursuant to section 25249; Statement in Support

21 of Order; Order levying administrative penalties against Respondents, in the amount of at least

22 \$420,000.00, plus interest thereon, or according to proof, pursuant to section 25252, with

23 accompanying pleadings (Enforcement Action).

24           L.       On March 26, 2023, the Commissioner’s process servers served Curve Capital and

25 Kevin Martin with the Enforcement Action by personal delivery. Curve Capital and Kevin Martin

26 timely requested a hearing to contest the Enforcement Action and waived the right to a hearing within

27 15 days.

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2 M. Respondents desire to enter this Settlement Agreement which the Commissioner finds is  
3 in the public interest and consistent with the purposes fairly intended by the policies and provisions of  
4 the CSL.

5 N. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
6 forth herein, the Parties agree as follows:

7 **II.**

8 **Terms and Conditions**

9 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner, set  
10 forth above, in a manner that avoids the expense of a hearing and other possible court proceedings, protects  
11 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the  
12 CSL.

13 2. Finality of Settlement Agreement. Respondents agree to comply with this Settlement  
14 Agreement and stipulate that this Settlement Agreement is hereby deemed final.

15 3. Final Order to Discontinue Violations. Respondents stipulate that the Order to Discontinue  
16 Violations issued by the Commissioner on March 22, 2023, is hereby deemed final. Pursuant to  
17 Corporations Code sections 25249, Respondents hereby agree that in accordance with Corporations  
18 Code section 25249, they will immediately discontinue the violations set forth below:

- 19 a. Failing to comply with safeguard requirements, in violation of Corporations Code  
20 section 25235 and California Code of Regulations, title 10, section 260.237,  
21 subdivisions (a)(1)(5)(A)(B)(6).
- 22 b. Failing to meet the minimum net worth requirements, in violation of Corporations  
23 Code section 25241 and California Code of Regulations, title 10 § 260.237.2,  
24 subdivisions (a)(c)(d)(e).
- 25 c. Failing to file an Annual Report in violation of California Code of Regulations, title  
26 10, section 260.241.2, subdivisions (d)(2)(3)(4).
- 27 d. Failing to maintain books and records, in violation of Corporations Code section  
28 25241, subd. (a) and California Code of Regulations, title 10, section 260.241.3,  
subdivisions (a)(3)(7).

- 1 e. Engaging in activities that do not promote fair, equitable and ethical principles in
- 2 violation of Corporations Code section 25238 and California Code of Regulations,
- 3 title 10, section 260.238 subdivisions (a) (h) and (n).
- 4 f. Unlawfully offering and selling unqualified, nonexempt securities in violation of
- 5 Corporations Code section 25110.

6 The Order to Discontinue Violations is final and effective from the Effective Date of this Settlement  
7 Agreement, as defined in Paragraph 28 (Effective Date).

8 4. Surrender of License. Respondents stipulate to immediately close Curve Capital Partners,  
9 LP (the "Fund") to new investments upon execution of this Settlement Agreement and undertake to  
10 conduct an orderly dissolution of the Fund as of December 31, 2023. Respondents further stipulate that  
11 upon dissolution of the Fund, Curve Capital will unconditionally surrender its investment adviser  
12 certificate, no. 166408 by filing its Form ADV-W through CRD. The Commissioner hereby agrees to  
13 review Curve Capital's request to surrender its investment adviser certificate no. 166408 in accordance  
14 with Corporations Code section 25242 (a).

15 5. Penalties. Respondents shall pay to the Commissioner penalties in the amount of \$55,000  
16 no later than 30 days after the Effective Date. The penalties must be made payable in the form of a  
17 cashier's check or Automated Clearing House deposit transmitted to the attention of Accounting –  
18 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,  
19 California 95834. Notice of the payment must be concurrently sent to Uche Enenwali, Senior Counsel,  
20 Enforcement Division, by email at: uche.enenwali@dfpi.ca.gov. In the event the payment due date falls  
21 on a weekend or holiday, the payment shall be due the next business day.

22 6. Failure to Surrender License or Pay Administrative Penalty. Respondents stipulate that  
23 failure to comply with paragraphs 4 and 5 above will result in automatic revocation of Respondent's  
24 investment adviser certificate license no. 166408. Respondents hereby waive any notice or hearing rights  
25 afforded under the CSL, Administrative Procedure Act, including Government Code section 11415.60,  
26 subdivision (b); Code of Civil Procedure; or any other provision of law to contest the summary revocation  
27 contemplated by this paragraph.

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1           7.       Failure to Comply with Settlement Agreement or Order to Discontinue Violations.

2           Respondents agree that if they fail to comply with this Settlement Agreement or the Order to  
3 discontinue Violations set forth in this Settlement Agreement, or fail to timely cure any breach to the  
4 satisfaction of the Commissioner, the Commissioner may, in addition to all other available remedies she  
5 may invoke under the CSL, summarily suspend, deny any pending application for a license by  
6 Respondents, or revoke, the investment adviser certificate of Respondents. Respondents stipulate to the  
7 finality of any such suspensions, revocations, or denials that the Commissioner may order. Respondents  
8 waive any notice and hearing rights to contest such summary suspensions, revocations, or denials which  
9 may be afforded under the CSL, the California Administrative Procedure Act, the California Code of  
10 Civil Procedure, or any other provision of law in connection therewith.

11           8.       Future Registration and Heightened Supervision.

12           Respondents stipulate that upon the surrender of Curve Capital's investment adviser license no.  
13 166408, Respondents shall not apply for a new investment adviser license for a period of 24 months from  
14 the effective date of this Settlement Agreement. Further, if Respondents seek any position of employment  
15 of any investment adviser, Respondents Kevin Martin and Ryan Martin agree to satisfy the qualification  
16 requirements of California Code of Regulations, title 10, section 260.236, and further agree that any  
17 investment adviser representative (IAR) registration or other application must be submitted by or on  
18 behalf of Respondents Curve Capital, Kevin Martin and Ryan Martin to the Commissioner. Respondents  
19 agree and understand that the Commissioner's approval, if any, of any such IAR registration or  
20 application may be granted on a restricted basis, and on the condition that Respondents Curve Capital,  
21 Kevin Martin and Ryan Martin and their future investment adviser firm agrees to a period of heightened  
22 supervision (Heightened Supervision) of at least 24 months. During the Heightened Supervision period,  
23 Respondents Curve Capital, Kevin Martin, and Ryan Martin may serve only as a non-supervisory  
24 employee, and not as an owner, manager or control person of the investment adviser, broker-dealer or  
25 commodity adviser.

26           9.       Full and Final Settlement. The Parties hereby acknowledge and agree that this Settlement  
27 Agreement is intended to constitute a full and final resolution of the violations described herein, and that  
28 no further proceedings or actions will be brought by the Commissioner in connection with these matters

1 under the CSL or any other provision of law except for proceeding to enforce compliance with the terms  
2 of this Settlement Agreement.

3 10. Information Willfully Withheld or Misrepresented. This Settlement Agreement may be  
4 revoked, and the Commissioner may pursue any and all remedies available under law against  
5 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld or  
6 misrepresented material information used for and relied upon in this Settlement Agreement.

7 11. Future Actions by Commissioner. If Respondents fail to comply with any terms of this  
8 Settlement Agreement, the Commissioner may institute proceedings for any and all violations otherwise  
9 resolved under this Settlement Agreement and bring any actions against Respondents, or any of their  
10 partners, owners, officers, shareholders, directors, employees, or successors for any and all unknown  
11 violations of the CSL.

12 12. Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
13 Commissioner's ability to assist any other government agency (city, county, state, or federal) with any  
14 prosecution, administrative, civil, or criminal brought by that agency against Respondents or any other  
15 person based upon any of the activities alleged in this matter or otherwise.

16 13. Headings. The headings to the paragraphs of this Settlement Agreement are inserted for  
17 convenience only and will not be deemed a part hereof or affect the construction or interpretation of the  
18 provisions hereof.

19 14. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or successors in  
20 interest.

21 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
22 Settlement Agreement s/he has relied solely on the statements set forth herein and the advice of his or her  
23 own counsel, if represented. Each of the Parties further represents, warrants, and agrees that in executing  
24 this Settlement Agreement s/he has placed no reliance on any statement, representation, or promise of any  
25 other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or  
26 any other person or entity to make any statement, representation, or disclosure of anything whatsoever.  
27 The Parties have included this clause: (1) to preclude any claim that any party was in any way  
28 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of parol

1 evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

2 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of this  
3 Settlement Agreement will be valid or binding unless it is in writing and signed by each of the Parties.  
4 The waiver of any provision of this Settlement Agreement will not be deemed a waiver of any other  
5 provision. No waiver by either party of any breach of, or of compliance with, any condition or provision  
6 of this Settlement Agreement by the other party will be considered a waiver of any other condition or  
7 provision or of the same condition or provision at another time.

8 17. Full Integration. This Settlement Agreement is the final written expression and the  
9 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
10 covenant between the Parties with respect to the subject matter hereof, and supersedes all prior or  
11 contemporaneous agreements, negotiations, representations, understandings, and discussions between and  
12 among the Parties, their respective representatives, and any other person or entity, with respect to the  
13 subject matter covered hereby.

14 18. No Presumption Against Drafting Party. Each party acknowledges that s/he has had the  
15 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the Parties  
16 intend that no presumption for or against the drafting party will apply in construing any part of this  
17 Settlement Agreement. The Parties waive the benefit of Civil Code section 1654 as amended or  
18 corresponding provisions of any successor statute, which provide that in cases of uncertainty, language of  
19 a contract should be interpreted most strongly against the party that caused the uncertainty to exist.

20 19. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that s/he  
21 has received, or had the opportunity to receive, independent advice from his or her attorney(s) and/or  
22 representatives with respect to the advisability of executing this or Settlement Agreement.

23 20. Governing Law. This Settlement Agreement will be governed by and construed in  
24 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court, and  
25 hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to  
26 the maintenance of such action or proceeding in such court.

27 21. Effect Upon Future Proceedings. If Respondents apply for any license, permit or  
28 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future

1 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be  
2 admitted for the purpose of such application(s) or enforcement proceedings(s).

3 22. Third Parties. This Settlement Agreement does not create or give rise to any private  
4 rights or remedies against Respondents, create any liability for Respondents, or limit the defenses of  
5 Respondents for any person or entity not a party to this Settlement Agreement.

6 23. Voluntary Agreement. Respondents enter into this Settlement Agreement voluntarily and  
7 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
8 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each  
9 represent and acknowledge that they are executing this Settlement Agreement completely voluntarily and  
10 without any duress or undue influence of any kind from any source.

11 24. Counterparts. This Settlement Agreement may be executed in one or more separate  
12 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
13 together constitute a single document.

14 25. Notice. Any notice required under this Settlement Agreement shall be provided to each  
15 party at the following addresses:

16 To Respondents: Kevin Joseph Martin  
17 Curve Capital LLC  
18 7545 Irvine Center Drive, Suite 200  
Irvine, California, 92618.

19 To the Commissioner: Uche L. Enenwali, Senior Counsel  
20 Department of Financial Protection and  
21 Innovation  
22 320 West 4th Street, Suite 750  
23 Los Angeles, California 90013  
[Uche.Enenwali@dfpi.ca.gov](mailto:Uche.Enenwali@dfpi.ca.gov).

24 26. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
25 signature.

26 27. Public Record. Respondents hereby acknowledge that this Settlement Agreement is a  
27 matter of public record.

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28. Effective Date. This Settlement Agreement shall become final and effective when signed by all Parties and delivered by the Commissioner's agent via e-mail to: jgrand@tslg-law.com.

Dated: October 13, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By

\_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: October 13, 2023

CURVE CAPITAL, LLC

By

\_\_\_\_\_  
KEVIN MARTIN, an individual and on  
behalf of CURVE CAPITAL, LLC

Dated: October 13, 2023

By

RYAN MARTIN, an individual and on behalf of  
CURVE CAPITAL, LLC

APPROVED AS TO FORM

By

\_\_\_\_\_  
James Grand, Esq.  
THE SECURITIES LAW GROUP  
Attorneys for Respondents