

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT CO.,
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

RECEIVER'S APPLICATION FOR ISSUANCE OF A LETTER OF REQUEST

Daniel S. Newman, as Court's Appointed Receiver ("Receiver") for Founding Partners Capital Management, Co. ("Founding Partners"), Founding Partners Stable-Value Fund, LP ("Stable Value"), Founding Partners Stable-Value Fund II, LP ("Stable Value II"), Founding Partners Global Fund, Ltd. ("Global Fund") and Founding Partners Hybrid-Value Fund, LP ("Hybrid Value") (collectively, the "Receivership Entities") files this Application for the Issuance of a Letter of Request and in support states as follows:

1. On April 20, 2009, the United States Securities and Exchange Commission ("SEC") filed a complaint against Founding Partners and William L. Gunlicks ("Gunlicks"), alleging that Founding Partners and Gunlicks engaged, and were

engaging in, a scheme to defraud investors and violate the federal securities laws. In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. (D.E. 1)

2. On April 20, 2009, the Court entered an order (“Asset Freeze Order”) freezing Founding Partners’ assets, the assets of Receivership Entities and Gunlicks. On April 20, 2009, the Court also entered an order (the “Initial Order Appointing Receiver”) appointing a receiver (the “Initial Receiver”) over the Receivership Entities. (D.E. 9). The Initial Receiver was subsequently removed by Court Order dated May 13, 2009. By order dated May 20, 2009 (“Order Appointing Receiver”), Daniel S. Newman, Esq. was appointed as Receiver over the Receivership Entities. (D.E. 73). The Receivership Order authorizes the Receiver to, among other things:

- (a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order;
- (b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants,

including against Founding Partners and the Founding Partners Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts; and

- (c) Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets, real funds, wherever situated, of Founding Partners or Relief Defendants and, upon, Order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary.

3. The Order appointing Receiver also provides that all banks, brokerage firms, financial institutions, and other business entities that have possession, custody and/or control of any assets, funds and/or accounts in the name of, or for the benefit of, Founding Partners or Relief Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver

4. Upon being appointed, the Receiver was advised that HSBC The Bank of Bermuda, located at 6 Front Street, Hamilton, Bermuda, HM11 (the "Bank of Bermuda"), was in possession of in excess of \$13 Million of investor funds held in the name of Global Fund, one of the Receivership Entities. The Receiver was furnished with a communication from the Bank of Bermuda to the prior Receiver in which Bank of Bermuda stated that it would accept the appointment and instructions of the prior Receiver. Thereafter, however, the Bank of Bermuda refused to comply with the Orders of this Court and the Receiver's directions. Indeed, for a period of time, the Bank of

Bermuda refused even to respond to the Receiver's letters and e-mails, one of which specifically directed it to transfer the funds to the Receiver in the United States.

5. On June 19th and 25th, 2009, the Bank of Bermuda's attorneys, Wakefield Quinn, wrote to the Receiver and informed the Receiver that they do not believe the Bank of Bermuda is subject to the jurisdiction of the Florida Court and the Receiver. The Receiver agreed to take action in the Bermuda Court in order to enforce this Court's Asset Freeze Order and Order Appointing Receiver which requires that all assets of the Receivership Entities be placed under the control of the Receiver.

6. On June 11, 2009, after this Court's entry of the Initial Order Appointing Receiver, the Asset Freeze Order and the Order Appointing Receiver, several investors, instituted an action in the Grand Court of Cayman, to appoint Joint Provisional Liquidators over Founding Partners Global Fund, Inc. ("Global Fund Inc.") and the Global Fund. On June 11, 2009, the Grand Court of Cayman issued an Order appointing Joint Provisional Liquidators, Ian Stokoe and David Walker (the "JPLs") over Global Fund Inc. and Global Fund. This application was made despite the fact that the investors knew that this Court had entered the Initial Order Appointing Receiver, the Asset Freeze Order and the Order Appointing Receiver, exercising jurisdiction over the Receivership Entities, including the Global.

7. The JPLs have asserted claims against the Global Fund investor funds held at the Bank of Bermuda. On June 23, 2009 the JPLs instituted a proceeding in Bermuda to release funds held under the name of Global Fund styled *In the Matter of the Liquidation of Founding Partners Global Fund Ltd and in the Matter of a Letter of Request of the Grand Court of Cayman dated 16 June 2009*, In the Supreme Court of

Bermuda, Commercial Court, 2009: No. 190. They have applied in these Bermuda proceedings for the turnover to them of all the assets in Bermuda.

8. The appointment of the JPLs over the Global Fund, one of the Receivership Entities is directly contrary to this Court's orders. Based on his investigation to date, the Receiver believes that the Global Fund was managed by Gunlicks in the United States, and its funds likely were commingled with that of the other Receivership Entities. Accordingly, although the investigation is not complete, the Receiver believes that Receivership Entities' funds held in the name of the Global Fund should not be distributed to Global Fund investors, to the detriment of other investors in the Receivership Entities. Therefore, the Receiver must act to preserve the funds for the benefit of the entire estate and all victims, not just Global Fund victims.

9. On July 1, 2009, the Receiver sought the approval of this Court to retain the law firm of Attride-Stirling & Woloneicki ("ASW") in order to represent the Receiver's interest in Bermuda. By Order dated July 2, 2009, this Court entered an Order approving the retention of ASW. (D.E. 104).

10. On July 16, 2009, through his Bermuda counsel, ASW, the Receiver filed a summons in the Supreme Court of Bermuda "Commercial Court" Civil Jurisdiction to intervene in the Bermuda matter, which had been initiated by the JPLs. The Receiver was granted the right to intervene. Thereafter, on July 16, 2009, the Supreme Court of Bermuda entered an order allowing the Receiver to file affidavit evidence, including expert evidence of the United States law in connection with the Receiver's rights to funds in Bermuda under the name of the Global Fund. The Receiver has filed a further summons in the Supreme Court of Bermuda seeking, among other things, an order to give

effect the Letter of Request which the Receiver seeks in this application in the event it is issued.

11. The Bermuda Court will hold a hearing to determine who has rights to the funds under the name of Global Fund held at the Bank of Bermuda. In connection with that hearing, the Receiver received Court permission to retain Professor Jay Westbrook (“Professor Westbrook”), who has lectured and published extensively in the areas of domestic and cross-border insolvency, to provide the Bermuda Court with expert evidence on United States law in the areas of insolvency and Bankruptcy and, if appropriate, international law relating to insolvency. (D.E. 164).

12. The Receiver has also for some time been pursuing the parallel course of negotiating with the JPLs in an effort to resolve the matter without the need for litigation and the ensuing costs to the receivership estate. However, to date, those efforts have not achieved a successful resolution, although they are continuing. As such, the Receiver needs to take steps necessary to assist him in continuing with the litigation. In addition, even if an agreement were reached with the JPLs, the Receiver would need to conduct further litigation in Bermuda in order to pursue all of the assets in Bermuda.

13. The initial date for the evidentiary hearing was postponed and currently, the evidentiary hearing on the disputed issues is anticipated to be set for sometime in November or early December 2009, in Bermuda.

14. In connection with the Order Approving Receiver, the Receiver respectfully requests that the Court issue the Letter of Request attached hereto as Exhibit “A”. The purpose of the Letter of Request is to seek the assistance of the Supreme Court of Bermuda to enforce this Court’s Order Appointing Receiver and Asset Freeze Order

and for the funds of Global Fund to be placed under the control of the Receiver. The Receiver has been advised that a Letter of Request in the form attached will significantly assist the Receiver in obtaining the funds in Bermuda.

15. Section 28 U.S.C. § 1781 (West 2009), addresses, among other things, the power of the United States Department of State to issue letters rogatory or requests to foreign tribunals. That Section specifically provides that nothing in it precludes:

the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

Id. at 28 U.S.C. § 1781(b)(2).

16. This Court has the inherent power to issue a letter of request requesting the assistance of to a foreign tribunal. *Brake Parts, Inc. v. Lweis*, Civil Action No. 09-132-KSF, 2009 WL 1939039, at *2 (E.D. Ky. July 6, 2009)(in granting issuance of letter rogatory court acknowledged that “[c]ourt’s have the inherent authority to issue letters of request.”). Courts can invoke this procedure when evidence or property relevant to a litigation or their domestic properties lie abroad. *See Astrazeneca v. Ranbaxy Pharmaceuticals, Inc.*, Civil Action No. 05-5553 (JAP), 2008 WL 314627, at *4-6, (D.N.J. Jan. 29, 2008)(granting motion seeking court issuance of Letter of Request seeking international judicial assistance in Sweden to take deposition).

WHEREFORE, based on the foregoing the Receiver respectfully requests that the Court issue the Letter of Request attached as Exhibit "A" seeking the assistance of the Supreme Court of Bermuda to enforce this Court's Order Appointing Receiver and Asset Freeze Order.

Respectfully Submitted,

BROAD AND CASSEL

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Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 995-9443

By: /s/Jonathan Etra

Jonathan Etra, Esq.
Florida Bar No. 0686905
Counsel for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jonathan Etra
Jonathan Etra, Esq.

SERVICE LIST

<p>Christopher Ian Anderson, Esq. U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6317 305-536-4154 (fax) andersonci@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i> Service via CM/ECF</p>	<p>Paul A. Calli, Esq. Walter J. Tache, Esq. Marissel Descalzo, Esq. Carlton Fields, P.A. 4000 International Place 100 SE 2nd Street Miami, FL 33131 305-358-5000 305-579-9749 (fax) pcalli@carltonfields.com wtache@carltonfields.com mdescalzo@carltonfields.com <i>Counsel for Defendant William L. Gunlicks</i> Service via CM/ECF</p>
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**IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
CIVIL JURISDICTION**

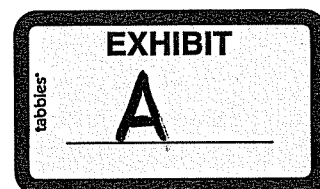
2009: No. 190

**IN THE MATTER OF THE LIQUIDATION OF FOUNDING PARTNERS GLOBAL
FUND, LTD
AND IN THE MATTER OF A LETTER OF REQUEST OF THE GRAND COURT OF
CAYMAN DATED JUNE 16, 2009**

**LETTER OF REQUEST
To the Supreme Court of Bermuda**

WHEREAS, this Court is the Court with exclusive jurisdiction over the proceedings commenced by the United States Securities and Exchange Commission in the action styled *United States Securities and Exchange Commission vs. Founding Partners Capital Management Co., and William L. Gunlicks, Defendants and Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd. and Founding Partners Hybrid-Value Fund, LP, Relief Defendants*, United States District Court, Middle District of Florida, Fort Myers Division, Case No.: 2:09-CV-229-FTM-29SPC;

WHEREAS, on April 20, 2009, United States Securities and Exchange Commission (“SEC”) filed a complaint against Founding Partners Capital Management Co. (“Founding Partners”) and William L. Gunlicks (“Mr. Gunlicks”), alleging that Founding Partners and Mr. Gunlicks had engaged in and were engaging in a scheme to defraud investors and violate the Federal Securities Laws. Along with the Complaint the SEC filed a Motion for Entry of a Temporary Restraining Order and Preliminary Injunction and provided evidence to this Court establishing a *prime facie* case of a violation of the federal securities laws by Founding Partners and Mr. Gunlicks;



WHEREAS, the SEC also provided sufficient evidence to show that Founding Partners and Mr. Gunlicks were operating through and controlling the relief defendants Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd. (“Global Fund”) and Founding Partners Hybrid-Value Fund, LP (collectively the “Relief Defendants”).

WHEREAS, on April 20, 2009, this Court entered an Order Freezing Assets and Other Emergency Relief against the Relief Defendants (“Asset Freeze Order”), which includes Global Fund.

WHEREAS, on April 20, 2009, this Court also entered an order (“Initial Order Appointing Receiver”) appointing a Receiver, Leyza Blanco (“Initial Receiver”) over the Relief Defendants. On May 13, 2009, the Court removed Leyza F. Blanco, Esq. as Receiver and on May 20, 2009, this Court entered an order (“Order Appointing Receiver”) appointing Daniel S. Newman, Esq. as Receiver for Founding Partners and the Relief Defendants. The Court’s orders empowered the Initial Receiver and the current Receiver to, among other things:

1. Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Relief Defendants whatsoever and wheresoever located, including but not limited to, all offices maintained by Founding Partners and the Relief Defendants, rights of action, books, papers, data, files and records from evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained by the Court’s Order, and to hold all other assets pending further order of this Court;
2. Investigate the manner in which the affairs of Founding Partners and Relief Defendants were conducted and institute such action in legal proceedings, for the benefit and on behalf of Founding Partners or the Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or incorporated organizations which the Received may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds

either directly or indirectly traceable from investors in Founding Partners and Relief Defendants . . . provided such action may include, but not be limited to, seeking imposition of a constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Fla. Stat. § 7.6.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Defend, compromise or settle legal actions, including the instant proceedings with Founding Partners and the Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Court's Order, with authorization of the Court; and
4. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets, real funds, wherever situated, of Founding Partners or Relief Defendants and, upon, Order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary.

WHEREAS, the Order appointing Receiver also provided that all banks, brokerage firms, financial institutions, and other business entities that have possession, custody and/or control of any assets, funds and/or accounts in the name of, or for the benefit of, Founding Partners or Relief Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver.

WHEREAS, the Order appointing Receiver also provided that during the period of the Receivership, all person, including creditors, banks, investors or others, with actual notice of the Order, are enjoined from filing a Petition for Relief under the United States Bankruptcy Code, without permission from the Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of Founding Partners or Relief Defendant.

WHEREAS, the Receiver has advised this Court that on June 8 and June 11, 2009, after this Court's entry of the Asset Freeze Order and both the Initial Order Appointing Receiver and the Order Appointing Receiver, investors instituted an action in the Grand Court of Cayman, to

appoint Joint Provisional Liquidators over Founding Partners Global Fund, Inc. (“Global Fund Inc.”) and the Global Fund. The Receiver has also advised this Court that on or about June 11, 2009, the Grand Court of Cayman issued an Order appointing Joint Provisional Liquidators, Ian Stokoe and David Walker (the “JPLs”) over Global Fund Inc. and Global Fund.

WHEREAS, the Receiver has advised this Court that HSBC The Bank of Bermuda, located at 6 Front Street, Hamilton, Bermuda, HM11 (the “Bank of Bermuda”), is in possession of in excess of \$13 Million of investor funds held in the name of Global Fund, one of the Relief Defendants.

WHEREAS, the Receiver has advised this Court that on June 23, 2009, the JPLs instituted a proceeding in Bermuda and on July 10, 2009 issued a summons applying to release funds held under the name of Global Fund at the Bank of Bermuda and The Bermuda Court is holding a hearing to determine who has rights to the funds under the name of Global Fund held at the Bank of Bermuda.

WHEREAS, the Receiver has moved this Court for the issuance of a Letter of Request seeking the cooperation of the Supreme Court of Bermuda to allow the Receiver to carry out in Bermuda the duties this Court has authorized him to perform in accordance with the Order Appointing Receiver.

WHEREFORE, this Court hereby requests that the Supreme Court of Bermuda exercise its jurisdiction under its inherit jurisdiction or in common law, and acts in the interest of comity to assist this Court in giving effect to this Court’s Asset Freeze Order and Order Appointing Receiver by making the following Orders, all which are consistent with the Asset Freeze Order and Order Appointing Receiver:

1. Recognizing this Court's Asset Freeze Order and Order Appointing Receiver over Founding Partners and the Relief Defendants;
2. Restrain any steps from being taken to enforce any security over the property of Founding Partners or any of the Relief Defendants, including Global Fund;
3. Restraining the commencement or continuance of any proceedings or legal process against Founding Partners or the Relief Defendants, including Global Fund;
4. Ordering the turnover of all funds in the name of or held for the benefit of Founding Partners or the Relief Defendants to the Receiver, including but not limited to those held at Bank of Bermuda in the name of the Global Fund; and
5. Authorize the Receiver to commence any ancillary winding up proceedings in Bermuda as may be necessary in accordance with the Order Appointing Receiver.