

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO: 10-49061 CACE (19)  
JUDGE: JOHN J. MURPHY, III

DANIEL S. NEWMAN, as Receiver for  
FOUNDING PARTNERS STABLE  
VALUE FUND, L.P., FOUNDING  
PARTNERS STABLE VALUE FUND,  
IL, L.P., FOUNDING PARTNERS GLOBAL  
FUND, LTD and FOUNDING PARTNERS  
HYBRID-VALUE FUND, L.P.,

Plaintiffs,

vs.

ERNST & YOUNG, LLP, a Delaware  
Limited Liability Partnership, and  
MAYER BROWN LLP, an  
Illinois Limited Liability Partnership,

Defendants.

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**AGREED ORDER REGARDING CASE SCHEDULE & CERTAIN DISCOVERY**

This matter coming for status on June 7, 2017; counsel for Plaintiff Daniel S. Newman, as Receiver for 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 (hereinafter, "the Receiver"), and for Defendant Mayer Brown LLP ("Mayer Brown") having appeared; and the Court being advised of the agreement by the Receiver and Mayer Brown as to certain case scheduling and discovery matters as set forth herein and in light of prior orders entered by this Court;

IT IS HEREBY ORDERED THAT:

1. This cause is set for Calendar Call on Thursday, November 29, 2018, at 8:45 a.m., Courtroom 14150.

2. The following schedule is entered based upon the agreement of the Receiver and Mayer Brown and the Court's orders dated April 28, 2017 and May 5, 2017. This schedule reflects that proceedings as to Defendant Ernst & Young LLP ("Ernst & Young") are stayed under the Court's May 20, 2016 order compelling arbitration of the Receiver's claims against Ernst & Young, which order is currently pending review by the Florida District Court of Appeal for the Fourth District. Ernst & Young has not participated in the negotiation of the schedule set forth in this Order. The Receiver and Mayer Brown (sometimes referred to herein as the "Parties") recognize that, if it is later determined that claims against Ernst & Young are to proceed or be tried in this Court, then adjustments to the schedule set forth in this Order may be appropriate.

3. **Document Production.** The Receiver and Mayer Brown shall substantially complete their respective productions of documents responsive to the Parties' respective First Sets of Requests for Production on or before June 30, 2017. The Parties agree that if either of those document productions are not substantially complete by June 30, 2017, it will be necessary to extend the dates in this Order. (It is contemplated that the Receiver and Mayer Brown may serve or have already served additional requests for document production; this paragraph pertains only to their respective First Requests for Production.) For further clarification:

a. As to the Receiver, substantial completion of the response to Mayer Brown's First Request for Production shall include: (a) production to Mayer Brown of responsive documents currently being withheld from production solely on the basis of the Receiver's need to obtain certain orders addressing confidentiality from the U.S. District Court

for the Middle District of Florida in the matters captioned *Securities & Exchange Commission v. Founding Partners Capital Management Company*, Case No. 2:09-cv-229, and *Daniel S. Newman, as Receiver v. Sun Capital, Inc.*, Case No. 2:09-cv-445; and (b) resolution of the issues raised by letter dated March 22, 2017 from Mayer Brown's counsel to the Receiver's counsel.

b. As to both Parties, substantial completion of responses to the other's First Request for Production on or before June 30, 2017 shall not require the production of privilege logs on or before that date, and/or the production of any documents subject to redaction for privilege or other reasons on or before that date. Such redacted documents and any associated privilege logs shall be produced on or before July 31, 2017.

4. **Amendment of Pleadings.** The Receiver may seek leave to amend his Third Amended Complaint no later than November 30, 2017. After that date, no further motion for leave to amend the Third Amended Complaint shall be permitted, absent a showing of good cause for extending this deadline. The deadline for Mayer Brown to amend its Answer shall be as follows:

a. The Receiver has informed Mayer Brown that, following certain discovery, he may seek leave to amend his Third Amended Complaint to add a request for punitive damages against Mayer Brown, but that, at this time, he does not contemplate other amendments to the Third Amended Complaint. (Mayer Brown has advised the Receiver that it would oppose a motion to amend to add a request for punitive damages). In the event the Receiver's motion to amend is limited to seeking leave to add a request for punitive damages against Mayer Brown, and in the event that such a motion is granted, then Mayer Brown shall answer such amended complaint within 15 days of any decision granting leave to amend. In that event, after the later of December 15, 2017 or 15 days after the Court grants such leave to

amend, no further amendment to Mayer Brown's answer shall be permitted absent a showing of good cause for extending this deadline.

b. Alternatively, if, on or before November 30, 2017, the Receiver seeks and is granted leave to file an amended complaint where the amendment is not limited to adding a request for punitive damages against Mayer Brown, then Mayer Brown may answer such amended complaint on or before the later of 15 days after such motion is granted or January 15, 2018, after which no further amendment to Mayer Brown's answer shall be permitted absent a showing of good cause for extending this deadline.

c. In all events, the final date for Mayer Brown to identify potential non-parties at fault pursuant to FLA. STAT. § 768.81(3) and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993) shall be the last date on which its amended answer is due under either subparagraph (a) or (b) of this paragraph. In the event that the Receiver does not seek or is not granted leave to amend his Third Amended Complaint, then the final date for Mayer Brown to identify potential non-parties at fault shall be the later of December 15, 2017 or 15 days after the date on which such motion to amend is denied.

**5. Fact Discovery Deadlines.**

a. The period for fact discovery, including written fact discovery, oral fact discovery, and non-party discovery, shall end on May 11, 2018. To ensure timely completion of fact discovery, any such discovery shall be propounded no later than April 11, 2018, and each Party shall work in good faith so as to avoid burdening the other with an unreasonably disproportionate and burdensome volume of discovery near the end of the discovery period.

b. Notwithstanding the May 11, 2018 deadline set forth above, the Parties agree that the period for fact discovery may be extended until May 31, 2018, solely to allow for

additional time to complete any oral discovery as to non-parties that the Parties agree is not necessary for either of them to complete their initial expert disclosures. To the extent the Parties cannot agree, such discovery shall be completed on or before May 11, 2018.

**6. Expert Disclosures & Expert Discovery.**

a. Expert disclosures addressing subject matters on which the disclosing party bears the burden of proof shall be served on all counsel on or before May 24, 2018.

b. Responsive expert disclosures by the other party shall be served on or before June 28, 2018.

c. The period for expert discovery, including oral expert discovery, shall end on August 3, 2018. As with fact discovery, the Parties shall cooperate in good faith in scheduling expert discovery so as to avoid an unreasonable burden on either party in the final weeks of this discovery period.

**7. Number of Interrogatories and Requests to Admit.** The Parties agree that there shall be no limit on the number of Requests to Admit that each may serve upon the other, although both Parties reserve the right to seek a protective order if they determine that the number or nature of Requests to Admit is unreasonably burdensome. The Parties further agree that each may serve up to 75 written interrogatories upon the other, without leave of Court to do so.

**8. Summary Judgment Motions.** The final date to file motions for summary judgment or partial summary judgment shall be August 30, 2018. The Parties agree that one or more motions for summary judgment or partial summary judgment may be filed in advance of that date, and that either party may file such motions on more than one occasion. Motions filed in advance of August 2018 shall be briefed and heard as agreed upon by the Parties or as ordered

by the Court. For any motion for summary judgment filed in August 2018, (i) responses in opposition shall be filed on or before October 4, 2018, and (ii) reply briefs in support of such motion shall be filed on or before October 25, 2018. As to any such motions, the Parties agree to consult with the Court to schedule a date for oral argument on such motions and will request a date in November 2018 that affords the Court sufficient time to review the motions and briefing in advance of the hearing. Motions for summary judgment will be heard in advance of the Calendar Call, and will not be heard at the Calendar Call, pre-trial conference or at the time of trial.

9. **At the Time of the Above Noticed Calendar Call**, the Joint Pretrial Stipulation must be completed and timely filed with the Clerk *with a copy provided to the undersigned Judge*. At the time of the Calendar Call, the Parties shall be prepared to discuss all items set forth in Fla. R. Civ. P. 1.200(b).

10. **The Joint Pretrial Stipulation.** The Joint Pre-Trial Stipulation will contain separately numbered paragraphs which will include the following:

a. **Statement of the Facts:** A concise, impartial statement of the facts of the case.

b. **Stipulated Facts:** A list of those facts that can be stipulated and require no proof at the trial.

c. **Statement of Disputed Law & Fact:** A list of the issues of law and fact that are to be tried.

d. **Exhibit Lists:** Each party will separately list all exhibits they intend to introduce into evidence. Each item shall be listed by number and description on a separate schedule attached to the stipulation. Each exhibit shall be specifically described. Generic

descriptions of exhibits are subject to being stricken. Counsel shall initial each other's exhibit list and exhibits. All exhibits to be offered in evidence at trial shall have been made available to opposing counsel for examination and initialing. Only those exhibits listed and initialed may be offered in evidence. If any party objects to the introduction of any such exhibit, such objection must be stated in the stipulation, setting forth the grounds with specificity. Demonstrative exhibits (e.g. charts, enlargements of exhibits) to be used at a jury trial must be disclosed to all counsel at least 24 hours in advance of the use of the demonstrative exhibit before the jury.

e. **Witness Lists:** The Parties will attach and furnish counsel with a written list in alphabetical order containing the names and addresses of all witnesses ("rebuttal," "impeachment" or otherwise) intended to be called at trial. Only those witnesses listed shall be permitted to testify. All witness lists shall include a brief description of the substance and scope of the testimony to be elicited from such witness. All expert witnesses and their specialties shall be designated. If any party objects to any witness, such objection must be stated in the stipulation, setting forth the grounds with specificity. At trial, all Parties shall be strictly limited to witnesses properly and timely disclosed.

f. **Jury Instructions.** Counsel shall identify all agreed upon standard instructions and all special instructions. Any disputed jury instructions shall be attached and identified as to the party that proposed the instruction. Copies of all agreed upon instructions or disputed instructions shall be attached to the stipulation, along with copies of supporting statutory citations and/or case law.

g. **Verdict Forms:** The jury verdict form[s] shall be attached and designated as agreed to or disputed.

h. **Peremptory Challenges:** The suggested number of peremptory challenges for each Party will be stated.

i. **Pending Motions.** The Parties will set forth a list of all pending motions. To the extent the court has time prior to commencement of the trial, all pending motions will be heard or set for hearing at a pretrial conference. All Parties shall be fully prepared to present legal argument for all pending motions at that pretrial conference.

j. **Trial Estimate:** Each Party shall provide an estimate of the number of days of trial for its side. The Parties now estimate that the trial will require six weeks.

k. **Daubert Issues:** All *Daubert*-related issues involving any requests for hearings on *Daubert*-related evidence shall be noticed and heard – or agreed to by the Parties – at the pretrial conference/calendar call or as ordered by the Court.

11. **Other Pretrial Scheduling Matters.** The Parties anticipate conferring about other pretrial scheduling matters, including a schedule for briefing motions in limine (other than for *Daubert*-related issues referenced in paragraph 10(k) above), proposing and objecting to deposition designations, and setting a final pre-trial conference after the Calendar Call. The Parties expect to agree upon a schedule for the same and submit an agreed order concerning scheduling of these matters to the Court no later than September 30, 2018.

12. **Trial Date.** Trial is set for the docket commencing Wednesday, January 2 through March 29, 2019. This cause is set for Jury trial before Judge John Murphy III in Courtroom 14150, Broward County Courthouse, 201 SE 6<sup>th</sup> Street, Fort Lauderdale, Florida. Counsel shall keep apprised of the status and progress of the cases in front of them on the docket. The Court anticipates commencing jury selection on Wednesday, February 6, 2019, with the trial commencing promptly upon the completion of jury selection.



13. **Mediation is Mandatory.** Mediation shall commence no later than (60) days prior to the Calendar Call. The Parties shall comply with Fla. R. Civ. P. 1.700, 1.710, 1.720, and 1.730 as to the conduct of mediation. Plaintiff's counsel is appointed lead counsel to facilitate and schedule the settlement conference with the mediator and all Parties. Counsel will immediately notify the Court in the event of settlement and submit a stipulation and order for dismissal. Unless the Parties choose and designate a different mediator to conduct the mediation by the deadline above, the Court appoints:

**Tom Lynch P.A.**  
1136 SE 3<sup>rd</sup> Ave  
Ft. Lauderdale, FL 33316  
(954) 923-9263  
tomlynchmediation@gmail.com

14. **Modification of this Order.** The Receiver and Mayer Brown may modify any of the deadlines or other provisions of this Order by seeking leave of Court to do so based upon a showing of good cause. The requirements of this Order cannot be waived by stipulation.

**THE PARTIES ARE CAUTIONED REGARDING  
THE FOLLOWING POLICIES OF THE COURT:**

- A. The Parties shall do all things reasonable and necessary to assure the availability of their witnesses for the entire trial period or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. See Rules 1.300 and 1.460 Fla.R.Civ.P. and Rule 2.545 of the Florida Rules of Judicial Administration. Continuances will only be considered on written motion prior to calendar call.
- B. No continuances will be granted for reasons that should have been readily apparent to counsel when the trial order was received, or because expert witnesses are unavailable since testimony may be preserved by deposition. All expert testimony shall be preserved for use at trial. Unavailability of experts shall not be grounds for

continuance or delay of the trial. Continuances requested for reasons relating to failure to follow this Order will not be granted.

- C. The Parties and counsel should be familiar with Fla.R.Civ.P. 1.380 regarding “Failure to Make Discovery: Sanctions,” and Fla. Stat. §57.105, entitled “Attorney’s Fee; sanctions for raising unsupported claims or defenses; service of motions; damages for delay of litigation.” The Court may impose sanctions for failure to comply with the requirements of this pretrial order including dismissal of the action.
- D. Failure to attend, failure to follow time requirements or file documents required by this Court may result in the dismissal of the action or the imposition of sanctions, including striking of the pleadings.
- E. There will be only one official record at a civil judicial proceeding taken by one court reporter. Plaintiff is responsible for arranging a court reporter unless otherwise agreed. If there are conflicts, then the attorneys must resolve any conflicts among themselves prior to the proceeding.

SO ORDERED.

Dated this \_\_\_\_ day of June, 2017.

TRUE COPY  
JUDGE JOHN J. MURPHY, III

JUN 07 2017

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