

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 COMPANY,  
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.

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**THE RECEIVER'S MOTION FOR COURT APPROVAL OF  
(a) THE RECEIVER'S RECOMMENDATIONS CONCERNING CLAIMS;  
(b) AN INTERIM DISTRIBUTION OF INTERESTS IN THE FP DESIGNEE;  
AND (c) THE RECEIVER'S PROPOSED OBJECTION SCHEDULE**

The Receiver Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver ("Receiver") for Founding Partners Capital Management Company ("FPCMC"); Founding Partners Stable-Value Fund, L.P. ("Stable Value"); Founding Partners Stable-Value Fund II, L.P. ("Stable Value II"); Founding Partners Global Fund, Ltd. ("Global Ltd.") and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid Value") (Stable-Value, Stable Value II, Global Ltd., and Hybrid Value are collectively called the "Receivership Funds") (collectively, the Receivership Funds and FPCMC are called the "Receivership Entities"), hereby files this Motion for Court Approval of: (a) the Receiver's recommendations concerning claims;

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(b) an interim distribution of interests in the FP Designee (as defined in the Receiver's previous filings); and (c) the Receiver's proposed objection and hearing schedule (the "Motion"). *The Receiver is authorized to state that the Securities and Exchange Commission has no objection to the relief requested.*

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**I. ASSETS FOR DISTRIBUTION**

**A. Interests in the FP Designee**

Pursuant to the Receivership Order, on July 14, 2009, the Receiver initiated *Newman v. Sun Capital, Inc., et al.*, Case No. 2:09-cv-445-FtM-229SPC (the “Sun Litigation”) by filing an ancillary proceeding against Sun Capital, Inc. (“SCP”), Sun Capital Healthcare, Inc. (“SCHP”), and HLP Properties of Port Arthur, LLC (“HLP”) (collectively, the “Sun Defendants”), seeking the recovery of over \$500 million, and asserting, among other things, claims arising from the loan agreements between Stable Value and the Sun Defendants. The vast majority of funds raised by the Receivership Funds were provided to the Sun Defendants as loans.

On December 9, 2011, the Receiver and Sun Capital filed a Joint Motion for Expedited Approval of the Proposed Procedure to Obtain Court Approval of a Proposed Settlement Transaction (the “Joint Motion”). [Sun Litigation, D.E. 248-249]. This Court granted the Joint Motion on December 27, 2011, and after hearing objections from investors, fully approved the Settlement Agreement between the Receiver and the Sun Defendants on August 28, 2012. [Sun Litigation, D.E. 255, 308]. The Settlement Agreement was executed on January 9, 2013.

In essence, the Settlement Agreement provides that, in exchange for releasing the Sun Defendants from the Receiver’s claims and potential claims, the Sun Principals (as defined in the Settlement Agreement) will transfer their direct or indirect ownership interests in the factoring companies (SCHI and SCI) and their hospital companies and associated real estate holding companies (Promise, Success, and other related companies, as defined in the Settlement Agreement) to a newly formed, wholly-owned subsidiary of Stable Value (the “FP Designee”). Thus, under the terms of the Settlement Agreement, after the closing, each of SCI, SCHI and Success will be wholly-owned by the FP Designee, and SCHI will own 96% of the issued and

outstanding common stock of Promise, while the other 4% will be retained by the Sun Principals and other related individuals.

The Receiver files this Motion to, *inter alia*, obtain approval to make an interim distribution of ownership interests in the FP Designee to those investors with approved claims who chose to participate in the Settlement Agreement by submitting valid, fully executed Investor Releases to the Receiver along with their Court-approved claims forms (the “Proof of Claim Form(s)”).<sup>1</sup>

### **B. Other Potential Recoveries**

The Receiver has taken other steps – in addition to the litigation with the Sun Defendants – to maximize the amount of recovery available to the Receivership Estate. Notably, the Receiver has instituted legal proceedings against the law firm of Mayer Brown LLP and the accounting firm of Ernst & Young, alleging that these professionals breached legal duties owed to the Receivership Entities,<sup>2</sup> among other avenues of recovery.<sup>3</sup>

These additional potential recoveries, however, are in different stages of litigation and/or resolution, and the Receiver cannot determine when or if funds will be made available for distribution to investors from these sources. Thus, the Receiver **does not** request leave to distribute any assets other than interim ownership interests in the FP Designee, at this time.

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<sup>1</sup> As of the time of this filing, the Settlement Transaction (as defined in the Settlement Agreement) has not closed, such that FP Designee, while formed as a subsidiary of Stable Value, has not yet acquired the Sun Defendants’ assets. In the event the closing does not take place prior to entry of an order on this Motion, the Receiver still seeks to distribute interim ownership interests in the FP Designee to eligible claimants.

<sup>2</sup> See *Daniel Newman v. Ernst & Young LLP and Mayer Brown, LLP*, Broward County Circuit Court, Case No. 10-49061 (the “Mayer Brown Litigation”).

<sup>3</sup> The Receiver has also commenced an ancillary action in this Court against William L. Gunlicks’ adult children and their respective trusts to recover fraudulent transfers made to them. See *Newman v. William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox, et al.*, Case No. 2:11-CV-479-JES-DNF. Additionally, the Receiver may recover some additional funds from the Receivership Entities’ investments – namely, limited recoveries from Hybrid Value’s private illiquid investments.

However, in the event of a later distribution to claimants – including those claimants that did not execute Investor Releases needed to be eligible to participate in the Settlement Agreement and receive interim interests in the FP Designee – based on such possible future recovery(ies), the Receiver expects to rely upon the Court’s ruling on the Receiver’s recommendations on approved and rejected claims herein.

## **II. BRIEF SUMMARY OF REQUESTED RELIEF**

Briefly, the Receiver recommends that the Court, following notice, opportunity for objections, and a hearing, issue two sets of rulings concerning the Receiver’s Schedule of Allowed Amounts (attached as Schedule A) and Schedule of Approved FP Designee Distributions (attached as Schedule B).

First, with respect to Schedule A, which contains the proposed allowed amounts that will govern all distributions (*i.e.* the interim distribution of FP Designee ownership interests and other potential future recoveries), the Receiver seeks a ruling from the Court allowing the investor claims listed (by claimant number) in Schedule A, in the amount reflected in column 9 (the “Allowed Amounts”). Where the Allowed Amounts in column 9 of Schedule A are left blank with a single dash, the Receiver requests that the Court reject those claims for all distributions.

Second, with respect to Schedule B, which contains the proposed ownership percentages in the FP Designee to be distributed to eligible claimants (the “Approved FP Designee Distributions”), the Receiver seeks a ruling from the Court allowing the interim distribution of ownership interests in the FP Designee to the investors listed (by claimant number) in the percentage set forth in column 5, and to reject all other claims or portions of claims for interim distributions of FP Designee ownership interests.

Generally speaking, the relationship between Schedule A and Schedule B is that Schedule A reflects the proposed Allowed Amounts for all investors who submitted claims, while Schedule B reflects only those investors with proposed Allowed Amounts who submitted Investor Releases and are thus eligible to participate in the Settlement Agreement and obtain an interim ownership interest in the FP Designee.

### **III. CLAIMS RECEIVED**

Pursuant to this Court's Order approving the proposed claims process, dated August 28, 2012 [D.E. 349], all Proof of Claim Forms were to be completed and returned to the Receiver's office no later than October 12, 2012. [*Id.* at 2].

Also pursuant to the Court's Order dated August 28, 2012, every claimant who wanted to participate in the Receiver's Settlement Agreement with Sun Defendants in the Sun Litigation had to complete an Investor Release and return it to the Receiver's office no later than October 12, 2012.

To date, the Receiver received 218 claims.<sup>4</sup> The Receiver's professionals reviewed each Proof of Claim Form, along with any supporting documentation provided by the claimant and the Receivership Entities' documents in the Receiver's possession. After review, the Receiver has been able to verify and recommend for approval the great majority of the claims submitted. This group of Approved Claims<sup>5</sup> includes 156 of the 218 submitted claims.

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<sup>4</sup> This number includes three (3) FPCMC claims, which were not required to file formal Proof of Claim Forms.

<sup>5</sup> "Approved Claims" refers to claims for which Proofs of Claim have been filed by investors, with the Receiver, in accordance with the provisions set forth in the Proof of Claim Form and this Court's Orders, and which have been determined by the Receiver as compensable to the claimant in the Allowed Amount.

Of the 156 investors with Approved Claims, 152 submitted Investor Releases and are eligible to receive an interim distribution of ownership interests in the FP Designee at this time.<sup>6</sup> Accordingly, four (4) investors with Approved Claims, claimants numbered 55, 93, 94 and 96, did not submit Investor Releases and are not eligible to participate in the recovery from the Settlement Agreement or receive this first interim distribution, but would be eligible to receive other distributions, for example, from the Mayer Brown Litigation.

As set forth below, the Receiver **rejects**, in whole or in part, 62 of the claims received, including the sole creditor claim. The Receiver objects to the Rejected Claims<sup>7</sup> in accordance with the recommendations and procedures set forth below.<sup>8</sup>

#### **IV. RECEIVER'S RECOMMENDATIONS**

##### **A. Receiver's Recommendations for Allowed Amounts on Schedule A**

Schedule A identifies, by claimant number, each person or entity that filed a Proof of Claim Form, and also includes the Receiver's recommendation whether each claim should be approved, rejected, or rejected in part, the reasons for proposed rejections, whether each claim included a valid Investor Release sufficient to establish participation in the Settlement Agreement, the applicable Receivership Fund, the amount claimed in the Proof of Claim Form, the net invested capital amount per the Receivership Entities' records, and the proposed Allowed Amount.<sup>9</sup>

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<sup>6</sup> This number includes three (3) FPCMC claims, which did not require Investor Releases.

<sup>7</sup> "Rejected Claims" refers to claims to which the Receiver asserts an objection and recommends either full rejection or rejection in part, as more fully discussed in Section IV below.

<sup>8</sup> Of the 62 total Rejected Claims, all but one investor, claimant number 178, submitted an Investor Release.

<sup>9</sup> The Receiver has generally sought to keep the identities of the investors and creditors confidential. As part of that effort, the Receiver has replaced the names of the each investor on the Schedule A with a corresponding



Claimants 1 through 156 on Schedule A are the Approved Claims (*i.e.* approved in full). Therefore, the full amount of these investors claims are listed as Allowed Amounts in column 9 of Schedule A. Of the 156 Approved Claims, the Receiver notes that two (2) – claimants 152 and 153 – were received by the Receiver’s office after the October 12, 2012 deadline set by the Court in [D.E. 349]. The Receiver’s position is that equity dictates that these late-filed claims should be approved, as they are otherwise free and clear of any other objectionable characteristics.

With respect to the Rejected Claims (*i.e.* a category of claims for which the Receiver recommends either full or partial rejection of the claimed amount), totaling 62 claims, numbered 157 to 218 on the attached Schedule A, the Receiver makes the following recommendations:<sup>10</sup>

For claimants numbered 157 to 166 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in full**. Under the Net Invested Capital (“NIC”) approach for calculating claim amounts, explained in more detail below, claimants numbered 157 to 166 received more in redemptions than they contributed to the Receivership Funds, *i.e.* they are “Net Redeemers” under a NIC calculation. As a matter of equity, all Net Redeemer claims should be rejected. Net Redeemers have already recovered more than they invested in the Receivership Funds and should not be permitted to take any portion of a recovery away from any claimants who have not recovered their full investments, and their claims should

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claim number. Claimants will be provided with their claim numbers via private communication based on the most recent contact information in the Receiver’s possession. In this Motion, the Receiver discloses the names of two institutional investors – Global, Inc. (claimant number 217) and SSR Capital Partners (claimant number 218) – which have already identified themselves in filings and made representations to the Court about the purported value of their investments and their corresponding ownership interests in the FP Designee. The Receiver will discuss the claims of Global, Inc. and SSR Capital Partners in more detail in Section VII below.

<sup>10</sup> The Receiver notes that a number of claims could be rejected for multiple reasons, *e.g.* a claimant who is a Net Redeemer under a NIC calculation may also have claimed an amount that does not match the Receivership’s books and records.

be denied for that reason. Therefore, claimants 157 to 166 do not have proposed Allowed Amounts in column 9 of Schedule A, and their claims should be rejected.

For claimants numbered 167 to 179 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in full**. These claims are duplicative of the claim of the Joint Official Liquidator (“JOL”) on behalf of Global Fund, Inc. (“Global Inc.”) (claimant 217). A more detailed explanation of these claims is set forth in Section VII below. Therefore, claimants 167 to 179 do not have proposed Allowed Amounts in column 9 of Schedule A, and their claims should be rejected.

For claimants numbered 180 and 181 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in full**. Claimants 180 and 181 are the same entity, with separate investments in Hybrid Value and Stable Value. The Receiver recommends denying both claims because the entity received approximately \$416,000 more than it invested in Hybrid Value, and invested approximately \$126,000 more than it redeemed in Stable Value.<sup>11</sup> Thus, the entity reflected as Claimant 180 and 181 is in total a Net Redeemer of approximately \$290,000 when both claims are pooled together. Therefore, claimants 180 and 181 do not have proposed Allowed Amounts in column 9 of Schedule A, and their claims should be rejected.

For claimant number 182 on the attached Schedule A, the Receiver recommends that this Rejected Claim be **rejected in full**. Claimants 182 was not an investor in any of the

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<sup>11</sup> See *C.F.T.C. v. Equity Fin. Group, Inc.*, 2005 WL 2143975, \*26 (D. N.J. 2005) (approving a receiver’s recommendation to that transactions by an investor with ownership interests in more than one account in different capacities be pooled for purposes of determining the amount of distribution). The Receiver notes that this was the only instance where an identical investor had two or more claims, one of which was a Net Redeemer claim that required an offset. However, there were other instances where **similar**, not identical, investors had two or more claims, one of which was a Net Redeemer claim. The Receiver considered offsetting claims for these claimants, conducted an investigation into these claimants, and decided to recommend to the Court that these merely similar claims – not identical claims – should not offset one another, as the funds used to make the separate investments came from different sources.

Receivership Funds. Claimant 182 was contacted by the Receiver's professionals, and agreed with the Receiver's professionals that its claim was filed in error. Therefore, claimant 182 does not have a proposed Allowed Amount in column 9 of Schedule A, and its claim should be rejected.

For claimant number 183 on the attached Schedule A, the Receiver recommends that this Rejected Claim be **rejected in full**. Claimant 183 is Global Ltd. As discussed in greater detail below in Section VII, because the Global Ltd. claim is duplicative of the Global Inc. claim and Global Ltd. is not an investor under pooling, the Global Ltd. claim should be rejected. Therefore, claimant 183 does not have a proposed Allowed Amount in column 9 of Schedule A, and its claim should be rejected.

For claimants numbered 184, 185, and 186 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in part**. Claimants 184, 185, and 186 all submitted competing claims, seeking a distribution for the same investment. The Receiver contacted claimants 184, 185, and 186, and all three agreed that they should receive equal 1/3 shares of future distributions in connection with their claim.<sup>12</sup> Therefore, claimants 184, 185, and 186 each have a proposed Allowed Amount totaling 1/3 of the single total investment claimed, and their claims should be approved for that amount, reflected in column 9 of Schedule A.

For claimants numbered 187 to 207 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in part**. Claimants 187 to 207 submitted

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<sup>12</sup> Claimants 184, 185, and 186 are siblings who have submitted claims for an IRA account that previously was controlled by their deceased mother. In an abundance of caution, all three siblings submitted Proof of Claim Forms, as all three are beneficiaries and executors of the deceased mother's estate. All three claimants, along with the custodian of the original IRA investment account, signed a letter agreement agreeing and representing that claimants 184, 185, and 186 should share equally, 1/3 each, in future distributions in connection with this claim.

claim amounts that do not match the Receivership Entities' books and records. After reviewing the books and records of the Receivership and the supporting documentation submitted by these claimants, the Receiver believes the NIC amount reflected in the books and records of the Receivership Entities is accurate for all twenty-one (21) of these claimants. In instances where the discrepancy between the amount claimed by the claimant and the NIC reflected in the books and records of the Receivership Entities was not readily explainable, claimants were contacted by the Receiver's professionals to seek further explanation of the amount claimed. The contacted claimants either agreed with the Receiver's analysis that the books and records were accurate and the submitted claims were not or failed to provide support or an explanation for the amount claimed on their Proof of Claim Forms. Therefore, claimants 187 to 207 each have a proposed Allowed Amount totaling the amount reflected on the Receivership Entities' books and records, and their claims should be approved for that amount, reflected in column 9 of Schedule A.

For claimant numbered 208 on the attached Schedule A, the Receiver recommends that this Rejected Claim be **rejected in part**. The Receiver recommends that this claim be rejected in part because claimant 208 has been liquidated, with its assets transferred to a liquidating trust. On December 19, 2012, approximately two months after the claims deadline, claimant 208 submitted a notice of transfer to the liquidating trust, along with the liquidating trust agreement. As such, claimant 208 no longer exists, and the new entity, the liquidating trust, possesses the claim formerly belonging to claimant 208. Therefore, claimant 208's proposed Allowed Amount reflected in column 9 of Schedule A should be approved for the liquidating trust, as indicated at n.7 on Schedule A.

For claimants numbered 209 to 214 on the attached Schedule A, which all competed for the same two claim amounts, the Receiver recommends that the claims submitted by claimants 209 to 212 be **rejected in full**, and the claims submitted by claimants 213 and 214 be **rejected in part**. All six (6) of these claims relate to investments made by Strategic Stable Return Fund (ID), LP (“SSR”) and investments made by Strategic Stable Return Fund II, LP (“SSR II”) (collectively, along with related entities, the “SSR Entities”). After receiving these competing claims, the Receiver consulted with the SSR Entities and other interested parties, namely Credit Value Partners, LLC (“CVP”), a non-claimant entity. As a result of the discussions between the Receiver, the SSR Entities, and CVP, a letter agreement was entered into and signed by all the SSR Entities and CVP, directing the Receiver to make all distributions, including interim distributions of FP Designee ownership interests, to CVP. CVP will receive the initial interim distribution of FP Designee ownership interests for these claimants’ overlapping claims. Therefore, claimants 209 through 212 do not have proposed Allowed Amounts reflected in column 9 of Schedule A, and their claims should be rejected, while the proposed Allowed Amounts for claimants 213 and 214 should be approved for CVP, as indicated at n.8 on Schedule A.<sup>13</sup>

For claimants numbered 215 and 216 on the attached Schedule A, the Receiver recommends that these Rejected Claims be **rejected in part**. Claimants 215 and 216 received

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<sup>13</sup> The Receiver notes that six other claimants submitted, along with their Proof of Claim Forms, letters indicating that they had sold their as-of-yet undetermined ownership percentages in the FP Designee to the CVP entity. These sales were the subject of briefing in the Sun Litigation at [Sun Litigation, D.E. 309, 312], in which these claimants sought Court approval and/or Receiver approval of their sales to CVP. The Receiver opposed the relief sought because, among other things, these claimants sought to bifurcate their interests, selling only their ownership interests in the FP Designee, while retaining their rights to receive other recoveries. The Receiver has elected to distribute ownership interests in the FP Designee directly to these investors. Once the investors receive their ownership interests in the FP Designee, it is the Receiver’s position that they are free to transfer, sell, or otherwise assign their ownership interests as they please, including to CVP.

payments, including referral fees and unwarranted bonuses prior to the establishment of the Receivership. It is the Receiver's position that these payments should be treated as redemptions/offsets against the claims of claimants numbered 215 and 216. Therefore, claimants 215 to 216 each have a proposed Allowed Amount that was reduced for the pre-Receivership payments they received, and these proposed Allowed Amounts should be approved as reflected in column 9 of Schedule A.

For claimant numbered 217 – Global Inc. – on Schedule A, the Receiver recommends that this Rejected Claim be **rejected in part**. For reasons explained in more detail in Section VII below, the Receiver recommends that the Court reject this claim in part, and approve it for the proposed Allowed Amount indicated in column 9 of Schedule A.

For claimant numbered 218 – SSR Capital Partners, LP (“SSR Capital”) – on Schedule A, the Receiver recommends that this Rejected Claim, a creditor claim, be **rejected in full** for reasons explained in more detail in Section VII below. Therefore, claimant 218 does not have a proposed Allowed Amount in column 9 of Schedule A, and its claim should be rejected.

**B. Receiver's Recommendation for Approved FP Designee Interim Distributions**

As noted in Section III above, the Receiver also seeks a ruling allowing the interim distribution of ownership interests in the FP Designee to the investors listed (by claimant number) in the amount set forth in column 5 of Schedule B.

Schedule B lists all claimants that: (1) filed a Proof of Claim Form;<sup>14</sup> (2) are either an Approved Claimant or a Rejected Claimant with a claim that should only be partially rejected;

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<sup>14</sup> This number includes three (3) FPCMC claims, which were not required to file formal Proof of Claim Forms.

and (3) submitted a valid and fully-executed Investor Release.<sup>15</sup> Schedule B includes each eligible claimant's number, the Receivership Fund invested in, proposed Allowed Amount, and correlating proposed Approved FP Designee Distribution percentage.<sup>16</sup>

The percentages for Approved FP Designee Distributions listed in column 5 of Schedule B were calculated by taking each eligible claimant's proposed Allowed Amount and dividing it by the total amount of proposed Allowed Amounts. For example, claimant 1 has a proposed Allowed Amount of \$7,595,976, which is reflected in column 4 of Schedule B. The total amount of proposed Allowed Amounts for claimants listed on Schedule B is \$384,612,615. Thus, claimant 1's proposed Approved FP Designee Distribution is calculated by dividing \$7,595,976 by \$384,612,615, which equals the 1.97% reflected in column 5 of Schedule B.

#### **V. RECEIVER'S RECOMMENDED OBJECTION PROCEDURE**

By submitting executed Proof of Claim Forms to the Receiver, all claimants have submitted to the exclusive jurisdiction of this Court for the purpose of resolving their claims, and therefore all necessary procedures and discovery can be set and conducted by this Court. *Alexander v. Hillman*, 296 U.S. 222, 238-239 (1935).

The Receiver proposes that sufficient notice will be provided to claimants by the mailing to them, and e-mailing to them when possible (using the most recent contact information available to the Receiver), a copy of this Motion, the proposed Order, the applicable claim number, and a written notice stating that deadlines for objections will be set by the Court.

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<sup>15</sup> This includes (3) FPCMC claims, which did not require Investor Releases.

<sup>16</sup> The Receiver also requests that the Court enter a bar order, barring all claimants whom submitted Investor Releases, from taking any action that was affirmatively released in the Investor Release.

The Receiver further proposes to publish this Motion, the proposed Order, and the same written notice (without the identifying claimant information) on the Receivership website at [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com).

In light of the foregoing notice to claimants, the Receiver recommends that the Court adopt the following objection procedure (the “Objection Procedure”):

First, Claimants will have forty (40) days from the entry of the Court’s order approving this Objection Procedure to respond in writing to the Receiver’s recommendations. Claimants shall both file their objections with the Court and send their objections to the Receiver at his office, care of Jonathan Etra, Broad and Cassel, 2 South Biscayne Boulevard, Suite 2100, Miami, Florida 33131 **to be received** no later than forty (40) days from the entry of the Court’s order approving this Objection Procedure.

If a claimant does not object within the time frame provided, the Receiver’s recommendations will be deemed sustained with prejudice with respect to such claimant, subject to Court approval, and the right of the claimant to object will be deemed irrevocably waived.

Second, the Receiver shall submit responses to timely-filed claimant objections within forty (40) days from the final due date for claimant objections.

Third, The Receiver recommends that the Court set a hearing date to resolve objections and rule on the Receiver’s recommendations. The Receiver recommends that the hearing be set for a date as soon as possible after the Receiver’s response to objections is due.

In addition, in order to issue ownership interests in the FP Designee, the Court will need to first hold a fairness hearing pursuant to the Securities Act of 1933 (the “1933 Act”), Section 3(a)(10). The Receiver recommends that the hearings on objections and fairness for the issuance of securities be held contemporaneously.



## **VI. SUPPORT FOR THE RECEIVER'S RECOMMENDATIONS**

### **A. Preliminary Considerations**

1. *The Court Has Wide Discretion When Determining Appropriate Relief In Equity Receiverships*

This Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). "[I]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Id.*, citing *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 606 (9th Cir. 1978) and *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (a court overseeing a receivership is accorded "wide discretionary powers" in light of "the concern for orderly administration").

2. *The Court's Use of Summary Proceedings Is Appropriate In Receivership Actions*

Allowing investors an opportunity to object to this Motion provides sufficient due process. The use of summary proceedings in equity receiverships, as opposed to plenary proceeding, is within the jurisdictional authority of the federal district courts. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *Hardy*, 803 F.2d at 1040. "A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets." *Elliot*, 953 F.2d at 1566 (citation omitted). Summary proceedings may be used to allow, disallow and subordinate claims of creditors. *Hardy*, 803 F.2d at 1040. "[A] district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when facts are in dispute and to make arguments regarding those facts." *Elliot*, 953 F.2d 1567.

As part of these summary proceedings, the Receiver may assert, and this Court may adjudicate, objections to claimants seeking recovery from the Receivership Estate. By presenting their claims, investors have submitted themselves to the jurisdiction of this Court for decision on the Receiver's objections. *Alexander v. Hillman*, 296 U.S. 222, 238 (1935).

The Receiver believes the summary proceedings proposed herein strike a proper balance between efficiently resolving claims and distributing the assets of the Receivership Estate, and providing all claimants an opportunity to be heard regarding the distribution of those assets. The claimants' due process rights will be met by: (1) providing all claimants notice; (2) an opportunity to object to the relief sought in this Motion; and (3) a hearing on timely objections.

**B. Pooling and *Pro Rata* Distribution**

A major consideration that must be addressed is whether the four Receivership Funds – Stable Value, Stable Value II, Hybrid Value, and Global Ltd. – should be pooled<sup>17</sup> for purposes of determining eligible claimants' ownership percentages in the FP Designee.<sup>18</sup> It is the Receiver's recommendation that the Receivership Funds be pooled for the purposes of a *pro rata* distribution to all claimants.

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<sup>17</sup> Some of the cases cited by the Receiver in support of "pooling" refer to this distribution process as "consolidation." The Receiver does not intend for "pooling" to mean anything other than "consolidation," as used in these cases.

<sup>18</sup> The alternative to pooling the Receivership Funds is to analyze and calculate each eligible claimant's ownership percentage based only on the specific Receivership Fund with which he/she/it invested. For example, if pooling is not permitted: (i) Stable Value II, Hybrid Value, and Global Ltd. would each receive a distribution from Stable Value, and then Stable Value II, Hybrid Value, and Global Ltd. would have to conduct their own distributions of ownership interests to the individual investors in their respective funds; and (ii) Global Ltd. would receive a distribution of its interest in Hybrid Value, which would then be distributed to the individual investors in Global Ltd., because Global Ltd. invested in Hybrid Value.

1. *The Receiver's Recommendations Meet The Technical Standards For Pooling and Pro Rata Distribution*

The task of formulating a proper distribution plan is a sensitive undertaking because a plan that is “equitable” might not necessarily be popular with all investors. Federal law is clear, however, that securities receiverships, such as the instant proceeding, are governed by equitable principles. *Elliot*, 953 F.2d 1560, 1572 (11th Cir. 1992); *S.E.C. v. First Sec. Co.*, 528 F.2d 449, 454 (7th Cir. 1976); *S.E.C. v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 464 (S.D.N.Y. 2000) (“the fundamental principal of a [receivership] distribution plan is that it should be equitable and fair, with similarly-situated investors treated alike”).

Because receiverships are governed by equitable principles, the courts may authorize a receiver, upon good cause shown, to treat various receivership entities as one substantively pooled estate for the purpose of distribution to allowed claimants. *See S.E.C. v. One Equity Corp.*, 2011 WL 1002702, \*1 (S.D. OH 2011) (permitting pooling of six receivership entities upon good cause shown for purposes of distributing assets to approved claimants).

In determining whether “good cause” exists to warrant pooling various receivership entities for distribution purposes, federal courts have examined a number of different factors, including whether: (1) a unified scheme to defraud existed among the receivership entities; (2) the investors across the various receivership entities are similarly situated; and (3) funds were commingled among the receivership entities. *See S.E.C. v. Amerifirst Funding, Inc.*, 2008 WL 919546, \*4 (N.D. TX 2008) (pooling receivership entities because they were all involved in a unified scheme to defraud investors, even where there was no commingling of funds); *C.F.T.C. v. Walsh*, 2013 WL 1324054, \*13 (2nd Cir. 2013) (upholding district court’s finding that investors are similarly situated for purposes of a *pro rata* distribution plan when they are similarly situated in relationship to the fraud, in relationship to the losses, in relationship to the

fraudsters, and in relationship to the nature of their investments); *Elliot*, 953 F. 2d at 1565, n.1 (treating various receivership entities as a single entity in light of commingling of funds among them and defendant's failure to maintain strict separation); *See C.F.T.C. v. Eustace*, 2008 WL 471574, \*3 (E.D. Penn. 2008) (approving pooling of assets and *pro rata* distribution in light of evidence of joint marketing of receivership entities and commingling of funds).

First, all investors in the Receivership Funds are **similarly situated**.

Based upon the Receiver's investigation, it appears that all investors fell victim to false assurances by the principal of the Receivership Entities, William L. Gunlicks, and the investment opportunities offered by the Receivership Funds were all part of the same overall fraudulent scheme, *i.e.* there was a unified scheme to defraud investors across the Receivership Funds.

The investment strategies of Stable Value and Stable Value II were predicated on the same fraudulent scheme carried out by Gunlicks, *i.e.* the purported investing of funds under a credit and security agreements with the Sun Defendants, which would, in turn, purportedly acquire healthcare receivables in conformance with these agreements. Substantially all of the monies invested in Stable Value II were funneled directly to Stable Value to be loaned to the Sun Defendants.

As to Hybrid Value, its investors were victims of the same fraud for two reasons. First, Hybrid Value invested approximately 9% of its investors' funds into Stable Value, which in turn made loans to the Sun Defendants using those monies. Thus, the Hybrid Value investors fell prey to the same Stable Value fraud as the rest of the investors. Second, Hybrid Value investors were also defrauded concerning the balance of their Hybrid Value investments. Hybrid Value's offering memoranda represented to investors that Hybrid Value's assets would be "allocate[d] . . . among a select group of unaffiliated, experienced portfolio managers [ ], expected generally to

be between six to twelve, believed to have above-average to superior investment histories that, as a group, employ a variety of equity investment techniques and strategies.” In reality, other than the Hybrid Value monies that went to Stable Value, Hybrid Value’s monies were invested in mostly volatile, illiquid, private companies that were materially different from investments the memoranda represented were permissible. Moreover, there does not appear to have been “experienced portfolio managers” making these investment decisions, contrary to Gunlicks’ promise in the Hybrid Value offering memoranda.

As to Global Ltd., its investors fell for the same fraudulent scheme. First, Global Ltd. invested the vast majority of its funds into Stable Value. Second, Global Ltd. invested in Hybrid Value, enough to make it the largest investor in Hybrid Value. Thus, the investors in Global Ltd., through Global Ltd.’s investments in Hybrid Value, were victimized a second time by the Stable Value fraud and Gunlicks’ misrepresentations about the other Hybrid Value holdings, just like the other investors in Hybrid Value.

For these reasons, all investors were similarly situated and victims of the same fraud that was perpetrated by Founding Partners and William Gunlicks, and the Receiver recommends that the investors should share equally in the pooled assets in accordance with the Receiver’s distribution plan.

Second, while evidence of commingling is not required for pooling of entities and *pro rata* distribution,<sup>19</sup> it certainly appears that **commingling of monies**, to some extent, was occurring amongst the Receivership Entities.

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<sup>19</sup> See *S.E.C. v. Amerifirst Funding, Inc.*, 2008 WL 919546, \*3 (N.D. Tex. 2008) (“[T]he absence of commingling between various receivership entities does not render a pooled, *pro rata* distribution inequitable.”);

The Receiver respectfully submits that the cash flow between the Receivership Funds could support a finding of commingling. A cash flow analysis proves that Stable Value II, Hybrid Value, and Global Ltd. all invested monies into Stable Value, which in turn used those monies, and the monies it received directly from its own investors, to make loans to the Sun Defendants.<sup>20</sup>

After receiving funds from Stable Value II, Global Ltd., and Hybrid Value, Stable Value loaned the majority of its funds to the Sun Defendants. Consequently, funds from all four of the Receivership Funds were used by Stable Value to make loans to the Sun Defendants for the purported acquisition of healthcare receivables conforming to the terms of the loan agreements. Further, funds from the offshore investors in Global Ltd. were used by Hybrid Value for the purchase of illiquid private investments that are subject to a second fraud on the investors in these two funds.

Moreover, there was common management amongst all four Receivership Funds, and management fees were received by FPCMC from all four Receivership Funds.<sup>21</sup> Additionally, FPCMC was used as a vehicle to aggregate funds to pay the operating expenses of FPCMC and to provide Gunlicks with reserves to pay himself distributions (in essence, his salary). There is no evidence that the management fees received from the different funds were segregated in any fashion. Instead, Gunlicks utilized these funds to pay expenses in a manner that he deemed

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<sup>20</sup> Specifically, based on NIC, Global Ltd. invested approximately 86% of its investors' funds into Stable Value; Global Ltd. invested another 6% of its investors' funds into Hybrid Value; Hybrid Value invested approximately 9% of its investors' funds into Stable Value; and Stable Value II invested substantially all of its investors' funds into Stable Value.

<sup>21</sup> FPCMC received management fees from the four funds totaling over \$30 million — Stable Value paid the majority of the fees – over \$26 million.; Stable Value II paid approximately \$2 million in fees; Hybrid Value paid \$1.3 million in fees; and Global Ltd. paid approximately \$400,000 in fees. Per the Global Ltd. financial statements, Gunlicks chose to waive the management fees earned by Global Ltd. on multiple occasions.

appropriate, and he did not allocate expenses of one fund to the other or attempt to track which fund was incurring the majority of the expenses. The employees, rent, utilities, professional fees, etc. of FPCMC were benefiting all four Receivership Funds and the bills for these operating expenses were paid with the monies received as management fees.

In addition, Gunlicks' relationship and business dealings with the SSR Entities is relevant. As explained in the margin,<sup>22</sup> there was an investment by Hybrid Value into SSR Capital purportedly to help establish SSR Capital and its funds, SSR and SSR II. In turn, SSR and SSR II raised money that was eventually invested in Stable Value. Even if the representation in SSR Capital's Proof of Claim Form that there was no "quid pro quo" is true, the relationship between SSR Capital, SSR, and SSR II appears to have facilitated an alternative means of distributing funds from Hybrid Value to Stable Value, in furtherance of the underlying fraud.

For these reasons, the Receiver respectfully submits that investor funds in each of the Receivership Funds were used in furtherance of the underlying fraud, and supports pooling for the purposes of a *pro rata* distribution.

## 2. *Hybrid Value Objection To Pooling*

As the Court knows, two Hybrid Value investors previously took the position that Hybrid Value should not be pooled with the other three Receivership Funds in their objection (the "Hybrid Value Objection") to the Settlement Agreement in the Sun Litigation. [Sun Litigation,

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<sup>22</sup> Gunlicks caused Hybrid Value to invest a total of \$820,000 into SSR Capital. Because of Gunlicks' investment in SSR Capital, Hybrid Value is 1/3 limited partner in SSR Capital, along with the 2 principals of SSR and SSR II. From September 2003 through August 2008 – at approximately the same time that Hybrid Value began investing in SSR Capital – SSR and SSR II invested a net amount of approximately \$34.5 million in Stable Value. It appears that the net effect of these investments is as follows: Hybrid Value put money into SSR, which enabled SSR to put money into Stable Value.

D.E. 264-2]. At that time, the Court agreed with the Receiver that the Hybrid Value Objection was premature. The Receiver therefore anticipates from the briefing on the Hybrid Value Objection that at least some Hybrid Value investors would be inclined to argue that pooling is inappropriate now. Nevertheless, not only is pooling legally appropriate, but for the reasons discussed below, it is in the best interests of the Hybrid Value investors as a whole and is equitable.

First, irrespective of how Hybrid Value was “pitched” to its investors, Hybrid Value did indeed invest money into Stable Value. Thus, all Hybrid Value investors were made part of the unified scheme to defraud investors via Gunlicks’ loan program with the Sun Defendants.<sup>23</sup>

Second, a number of Hybrid Value investors also separately invested monies directly into Stable Value, effectively doubling down on their investments into Stable Value, and solidifying their status as victims of the unified scheme to defraud investors.

Third, just as the Stable Value, Stable Value II, and Global Ltd. offering memoranda intentionally misled investors about their investment strategies and the use of investor monies, Hybrid Value’s offering memoranda also misrepresented its investment strategy to potential investors. Ultimately, Hybrid Value invested in Stable Value – in furtherance of the unified scheme to defraud investors across all four Receivership Funds – and a number of private, illiquid investments. Hybrid Value’s investment selection process and the resulting investments were a far cry from what was represented to investors in Hybrid Value’s offering memoranda.

Fourth, Hybrid Value investors will be better off with pooling, as the alternative would limit their recovery. Hybrid Value investors will receive a larger percentage of the FP Designee after pooling and *pro rata* distribution than they will if pooling is disallowed. If the Court rejects

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<sup>23</sup> This also involves Global Ltd. monies, as Global Ltd. is the largest shareholder in Hybrid Value.



the Receiver's recommendation to pool Hybrid Value with the other Receivership Funds, the Hybrid Value investors will receive a smaller percentage of the FP Designee, and are not likely to obtain much in the way of an additional recovery from Hybrid Value's remaining holdings.<sup>24</sup>

3. *Administrative Burden and Costs*

Pooling of the Receivership Entities is also less burdensome, less expensive, and requires less judicial resources than the alternative.

If the Receiver is not permitted to pool the Receivership Funds, it would increase the administrative burden of distributing assets, significantly increase Receivership costs, and almost certainly result in waste of judicial resources.

First, if pooling is disallowed, FP Designee Distributions will require a multi-step distribution process to reach all investors across the Receivership Funds, wherein only Stable Value investors would receive initial distributions of FP Designee ownership interests. Because Hybrid Value, Global Ltd., and Stable Value II all invested in Stable Value, each of these three funds would receive a distribution from Stable Value if pooling is disallowed. Each of Hybrid Value, Global Ltd., and Stable Value II would then have to conduct their own distributions of FP Designee interests out to their individual investors. It becomes even more complicated, in that Global Ltd. invested in Hybrid Value, causing Global Ltd. to receive a second distribution of FP Designee ownership interests after the first Stable Value distribution. As a result, a multi-step

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<sup>24</sup> To date the holdings of Hybrid Value have been periodically posted on SharePost.com, the largest site for sales of privately held company stock & holdings. The holdings of Hybrid Value never garnered so much as a conversation about any of the assets from prospective purchasers. In addition, several times each year, existing management of the specific assets have been contacted to ascertain if there would be a market with either management themselves or the other shareholders. While some dilutive offers have been extended over the years, it has always been the position of the Receiver and his financial advisor not to accept low-ball offers in hopes a market might grow with individual successes of any one of the specific assets. Given that existing management and shareholders are not looking to increase their holdings or contribute additional capital toward a specific opportunity, the likelihood that a third-party will accept / buy into such a position in a diminutive stake of the underlying position, much less at a premium, is rather difficult to expect.

process is burdensome, creates a danger of added confusion, inequity, and objection litigation, and does not warrant the additional costs and judicial resources that would be required to do it properly.

It is far more preferable to pool the Receivership Funds and distribute *pro rata* to each investor, without need for all of the extra steps that would be required if pooling is disallowed.

### **C. NIC Calculation Method**

When reviewing a receiver's proposed plan of distribution, a district court sits in equity and has authority to approve any plan that is fair and reasonable. *See U.S. C.F.T.C. v. Barki, LLC*, 2009 WL 3839389, \*1 (W.D. N.C. 2009) (holding the same and recognizing that the facts of a given case dictate which method would be most equitable). Moreover, district courts are "painfully aware that no matter the method employed, the investors will feel the sting of inequity." *Id.*

Given the particular facts of this case, the Receiver recommends the Net Invested Capital ("NIC") calculation method for determining each claimant's Allowed Amount, as opposed to the Net Asset Value ("NAV") proposed by some investors.

The NIC method calculates each claimant's claim amount by totaling, for each investor, the amount of cash that was contributed to a Receivership Fund (*i.e.* a cash subscription), minus the amount of cash that was received pre- Receivership. Said another way, NIC represents "the total amount deposited by [each] claimant with the Receivership Entities less amounts returned to such claimant by the Receivership Entities and less any illegal trading profits reinvested by or credited to such claimant." *C.F.T.C. v. Topworth Int'l., Ltd.*, 205 F. 3d 1107, 1115 (9th Cir. 1999).

NAV on the other hand is calculated by taking each investor's total net cash investment, plus the total earnings on that investment, as calculated by the fraudster William Gunlicks.

It is the Receiver's position that the investors' fictional account balances are not a fair representation of the true value of the underlying assets of the Receivership Funds, where the collateral for the Stable Value loans to the Sun Defendants was inflated on the books and records of Stable Value and the investors were being misled. Because of Gunlicks' fraud, NAV is an inappropriate calculation methodology in this case.<sup>25</sup>

In general, district courts have demonstrated a preference for the use of calculations other than NAV in equity receiverships brought about by an underlying fraud. *See Elliot*, 953 F. 2d at 1569 (employing the NIC calculation method and observing that when all investors were defrauded, equity weighed against allowing some to benefit from the fortuity of the circumstances surrounding their investment); *Amerifirst*, 2008 WL 919546 at \*6 (deferring to the receiver's decision to use the NIC calculation method); *Barki*, 2009 WL 3839389 at 1–3 (considering multiple calculation methods for distributions and ultimately ruling NIC to be the most equitable); *Topworth*, 205 F. 3d 1107, 1115 (approving the NIC calculation method recommended by the receiver); *SEC v. Huber*, 702 F. 3d 903 (7th Cir. 2012) (considering the rising tide method and NIC calculation method at Receiver's recommendation).

The Receiver recommends the use of the NIC calculation in this case because: (1) credit should not be given to claimants for their fictional account balances;<sup>26</sup> and (2) the NIC

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<sup>25</sup> Gunlicks' fraud involved providing investors across the Receivership Funds with fictional account balances. In reality, the loans made to the Sun Defendants were highly under-collateralized.

<sup>26</sup> "A receiver . . . is not required to apportion assets in conformity with misrepresentations and arbitrary allocations that were made by the defrauder, otherwise, the whim of the defrauder would control the process that is supposed to unwind the fraud." *C.F.T.C. v. Walsh*, 712 F. 3d 735, 749 (2d Cir. 2013)

calculation strikes an appropriate balance between investors who redeemed fictional returns on their investments and investors who did not.<sup>27</sup>

The Receiver considered alternatives other than NIC or NAV – namely, among others: (1) the “rising tide” method; and (2) a variation of NIC that takes time value of money into account (“Adjusted NIC”). The Receiver recommends against utilizing either of these methods.

First, as to the “rising tide” method,<sup>28</sup> the Receiver does not recommend this calculation methodology because it would require a valuation of the FP Designee, which the Receiver believes would be too costly and result in further delay. To employ an estimated value of the FP Designee would be far too speculative, invite further litigation, and ultimately could adversely affect the FP Designee and the investors.

As for Adjusted NIC, the Receiver considered this method as a means of providing some time value of money to investors who had their investments tied up in the Receivership Funds the longest. To the Receiver’s knowledge, no district court has approved an Adjusted NIC methodology, so if this method were to be selected by the Court, it would be breaking new ground. To calculate Adjusted NIC, the Receiver’s professionals considered applying the ten-year average annual treasury bill rate from 2000-2009 to each investor’s running NIC balance from the date of first subscription to April 20, 2009, the date Founding Partners was placed into

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<sup>27</sup> At least one district court has approved the use of the NIC calculation methodology in the receivership context where the underlying fraud gave investors the choice of “receiving monthly interest payments or compounding earned interest into their investments.” *Amerifirst Funding*, 2008 WL 919546 at \*1. Under those circumstances, which also exist in this case, the district court held that a NIC calculation “seems to balance the positions of those investors who did receive interest payments and those who did not.” *Id.* at \*6. In *Amerifirst Funding*, the district court also indicated that it “defer[red] to the recommendation of the Receiver in choosing between two distribution plans that, in many respects, have differences that are incommensurable.” *Id.*

<sup>28</sup> See *C.F.T.C. v. Lake Shore Asset Mgmt. Ltd.*, 2010 WL 960362, \*7-8 (N.D. Ill. 2010) (defining the rising tide method as a method whereby “investors are allowed to retain previously received funds, but those funds are credited dollar-for-dollar against investors’ respective *pro rata* share[s] based on the full amount of their investments.”)

Receivership. However, the Receiver opted against recommending Adjusted NIC and notes that recent district court decisions have indicated that claimants should not receive time value of money considerations when there are insufficient funds to make all investors whole. *See Walsh*, 712 F. 3d at 755 (finding that it will be free to consider whether to approve a time value of money adjustment once the Receiver recovers sufficient funds to provide all victims with more than their respective net investments).

For the foregoing reasons, the Receiver respectfully recommends that all claimants' Allowed Amounts should be calculated using the NIC methodology.

**D. Fairness of Issuance of Ownership Interests in the FP Designee**

As noted in prior filings [Sun Litigation, D.E. 248 at 19], the Receiver seeks to issue membership interests in the FP Designee to eligible claimants pursuant to Section 3(a)(10) of the 1933 Act. *See* 15 U.S.C. § 77c(a)(10). Section 3(a)(10) exempts from registration:

[A]ny security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . .

15 U.S.C. § 77c(a)(10).

In accordance with section 3(a)(10) of the 1933 Act, the Receiver requests a fairness hearing to be held contemporaneously with the Court's hearing on objections to the recommendations made in this Motion. *See* Section V above.

The Court has jurisdiction to hold the fairness hearing required by section 3(a)(10) of the 1933 Act because it has jurisdiction over the Settlement Agreement entered into between the parties in the Sun Litigation, and has already approved the Settlement Agreement as fair. [*See*

Sun Litigation, D.E. 255, 308]; *see also S.E.C. v. Blinder Robinson & Co., Inc.*, 511 F. Supp. 799 (D. Col. 1981) (finding that the Court had jurisdiction to hold a fairness hearing pursuant to section 3(a)(10) of the 1933 Act because it had jurisdiction over the settlement agreement in the SEC's civil enforcement action).

The District Court in *Blinder Robinson* set forth five factors for consideration in determining whether a section 3(a)(10) issuance of exempt securities is "fair": (1) the recommendations of counsel; (2) the scope of discovery; (3) apparent alternatives to the settlement; (4) the nature and volume of responses from those receiving notice of the hearing; and (5) opportunity for direct participation by those who would receive issued securities. *Blinder Robinson*, 511 F. Supp. at 801.

Here, all five factors demonstrate that a section 3(a)(10) issuance of ownership interests in the FP Designee would be fair and weigh heavily in favor of approving the issuance.

First, counsel for the parties in the Sun Litigation both support the Settlement Agreement, and the Receiver has determined that the underlying Settlement Transaction (as defined in the Settlement Agreement) causing the issuance of ownership interests in the FP Designee is in the best interests of investors. Moreover, the Court has already affirmatively found a lack of collusion in coming to terms of the Settlement Agreement. [Sun Litigation, D.E. 308 at 23, n.7].

Second, the Court has already affirmatively found that "[m]ajor motions and issues are pending [and] significant discovery is sought by the parties if there is no settlement." *Id.* at 26. In fact, just before the Receiver entered into the Settlement Agreement, he issued sixty-one (61) subpoenas in advancement of discovery in this case. *Id.* As the District Court in *Blinder Robinson* acknowledged, "[t]here has been a time for a complete investigation into the facts in

this case and it is apparent that counsel have made full use of discovery procedures.” *Blinder Robinson*, 511 F. Supp at 801.

Third, with respect to alternatives to the Settlement Agreement, the Court has already found the alternatives to be less appealing. “Litigation outcomes are seldom a certainty, but this case appears to be especially problematic for all involved.” [Sun Litigation, D.E. 308 at 24]. “The possible judgment in this case . . . ranges from \$0 to \$550 million-plus . . . [but] the likely collectable value of even a \$550 million judgment may be virtually pennies on the dollar.” *Id.* at 24-25. “As the Receiver’s counsel stated at the fairness hearing, even a litigation win may be simply a pyrrhic victory.” *Id.* at 25. For these reasons, the alternative to settlement, which is further litigation, also supports a finding of fairness in issuing FP Designee ownership interests pursuant to section 3(a)(10).

As to the fourth and fifth factors, which go to the nature and volume of responses from investors and their opportunity to participate, the Receiver respectfully submits that 213<sup>29</sup> out of 218 claimants submitted Investor Releases, essentially constituting approximately 97.7% approval of the underlying Settlement Transaction. As the Court noted, “[e]ach investor gets to vote with his feet[ ] [and] [a]n investor can simply walk away, not sign the . . . Release, and pursue its own individual claims against the defendants . . .” *Id.* at 24. Faced with that vote, the vast and overwhelming majority of investors chose the Settlement Agreement over more litigation. Moreover, all investors received notice of, and had ample opportunity to appear at the last fairness hearing on the fairness of the Settlement Agreement. All claimants will be given similar notice and similar opportunity to appear at the fairness hearing proposed in Section V

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<sup>29</sup> This number includes the three FPCMC claims. FPCMC did not provide Investor Releases, but released claim in the Settlement Agreement.

above on the Receiver's recommendations and on the fairness of the issuance of ownership interests.

For these reasons, the five factors espoused in *Blinder Robinson* weigh heavily in favor of a finding of fairness in the proposed issuance of FP Designee ownership interests pursuant to section 3(a)(10) of the 1933 Act.

Other district courts have held, under different sets of facts, that some consideration should also be given to the value of the offer of securities. *See Continental Assurance Co. v. Macleod-Stedman, Inc.*, 694 F. Supp. 449, 468 (N.D. Ill. 1988) (acknowledging the *Blinder Robinson* factors, but also conducting an examination of the "fair value" of the securities offering); *In re Board of Directors of Multicanal S.A.*, 340 B.R. 154, 171-172 (S.D. N.Y. 2006) (requiring "more than procedural fairness" but expressly holding that "it would be wrong to require a full valuation . . .").

However, the District Court in *Blinder Robinson* held that it was not required to consider the valuation of the securities given the facts of its case, which are nearly identical to the facts here. Specifically, the District Court in *Blinder Robinson* found that it did not need to consider a valuation of the securities because the fairness hearing was not being sought in connection with a class action or derivative action,<sup>30</sup> and the value of the stock to be issued was too speculative given the developmental stage of the underlying business. *Blinder Robinson*, 511 F. Supp. at 801.

The facts of this case are nearly identical to *Blinder Robinson*. Here, unlike a class action or derivative action settlement, investors had the choice whether or not to opt in to the Settlement

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<sup>30</sup> Unlike settlements in those actions, investors were able to stay out of the settlement and pursue their private claims.



Agreement, as noted above. Accordingly, much like the investors in *Blinder Robinson*, investors in the Receivership Funds were given the opportunity “to evaluate the proposal on an individual basis.” *Id.* Moreover, the FP Designee and its underlying business holdings are in an early stage. Any valuation of the FP Designee at this point in time would be speculative and could potentially injure the investors who partake in the Settlement Agreement by damaging the perceived value of the FP Designee.<sup>31</sup>

For these reasons, the Receiver recommends an analysis of “fairness” identical to the analysis conducted by the District Court in *Blinder Robinson*, and respectfully submits that these factors weigh heavily in favor of approving the issuance of FP Designee ownership interests pursuant to section 3(a)(10) of the 1933 Act.

## **VII. ADDITIONAL DISCUSSION CONCERNING GLOBAL INC. CLAIM AND SSR CAPITAL CREDITOR CLAIM**

The following discussion concerns claimants numbered 217 and 218, Global Inc. and SSR Capital, respectively. The Global Inc. claim is a Rejected Claim that the Receiver recommends be rejected in part. The SSR Capital claim is a creditor Rejected Claim that the Receiver recommends be rejected in full.

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<sup>31</sup> Nonetheless, if the Court decides that an analysis of the value of the offering is required to determine “fairness”, the Receiver submits that the Court already found that the offering meets the standard set forth in *Macleod-Stedman*. *Macleod-Stedman*, 694 F. Supp. at 468. First, the Court has already found that the value of the ownership interests in the FP Designee are well within the range of fair, adequate, and reasonable, and are almost assuredly more than could be recovered in litigation. [Sun Litigation, D.E. 308 at 24-25]. Second, as the Court has already found, and the District Court in *Macleod-Stedman* found, “there is no firm, feasible and currently available alternative solution . . .” *Macleod-Stedman*, 694 F. Supp. at 468. Third, the value of the ownership interests issued in FP Designee are fair because the FP Designee’s holdings will be able to continue in business as a result of the Settlement Agreement. For these reasons, even if the Court adopts the increased scrutiny as to “fairness” espoused in *Macleod-Stedman* and *Multicanal*, the Receiver believes those factors also support a finding of fairness.

**A. Global Inc. Claim**

**1. General Facts**

**i. Global Ltd. and Global Inc.**

Global Ltd. is one of the four Receivership Funds over which the Receiver was appointed. Global Inc., by contrast, is not a Receivership Fund. Mr. Ian Stokoe of PricewaterhouseCoopers was appointed by a Cayman Island Court to act as the JOL of Global Inc. and Global Ltd.

Global Inc. is an offshore feeder fund. Global Inc. received funds from a number of investors and is made up of A shares, B shares, and E shares. The funds from Global Inc. were then contributed to Global Ltd. Global Ltd. obtained almost all of its investor funds from Global Inc. The remaining investor funds contributed to Global Ltd. were contributed by individual investors who invested directly into Global Ltd. (*i.e.*, not through Global Inc.), only one of which filed a Proof of Claim Form and has been assigned a proposed ownership percentage in the FP Designee (claimant 1).<sup>32</sup>

Global Ltd. invested the class A and class B Global Inc. funds into Stable Value and Hybrid Value; however, it invested the funds from class E elsewhere (*i.e.*, not into a Receivership Fund). Approximately 86% of the Global Ltd. funds was put into Stable Value, and approximately 6 % was put into Hybrid Value.

**ii. Global-Related Proofs of Claims**

The JOL submitted proofs of claim for Global Inc. (claimant number 217) and Global Ltd. (claimant number 183).

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<sup>32</sup> The other individual investors who invested directly into Global Ltd. were net redeemers and did not file Proof of Claim Forms.

In addition, 13 class A and class B shareholders in Global Inc. submitted their own individual Proof of Claim Forms (reflected on the attached Schedule A as claimants numbered 167 to 179) that competed with the Proof of Claim Form submitted by the JOL on behalf of Global Inc. The rest of the approximately 67 class A and class B shareholders in Global Inc. did not submit individual proofs of claim. It is our understanding that the JOL advised all class A and B shareholders not to submit individual proofs of claim that would compete and overlap with the JOL's Proof of Claim Form for Global Inc.

Finally, claimant number 1 submitted its own Proof of Claim Form with respect to its direct investment in Global Ltd.

**iii. Settlement Discussions with the JOL**

As noted in the Receiver's most recent report [D.E. 394], due to the relative size of the claims submitted by the JOL and the number of issues involved, the Receiver believed it made sense to have settlement discussions with the JOL to attempt to resolve all issues surrounding these proofs of claim. To that end, the Receiver, the Receiver's advisors, the JOL, and the JOL's advisors have had numerous telephone discussions, exchanged notes, documents, and calculations, and had an in-person meeting in Miami, all covered by the settlement privilege. Without disclosing any substantive information or positions taken, the Receiver believes he and the JOL enjoyed a positive, constructive working relationship. Although a final resolution with the JOL, who reports to a Cayman-based Liquidation Committee, was not achieved, the Receiver believes he and the JOL made great progress toward eliminating (or at least minimizing) any objections by the JOL.

**2. The Receiver's Recommendation Respecting the Global-Related Claims**

**i. All Global-Related Claims Other Than The Claims of Global Inc. and Claimant Number 1 Should Be Rejected**

As noted above, the two sources for the funds that were invested into Global Ltd. were Global Inc. (claimant number 217) and claimant number 1. The claim of Global Inc. submitted by the JOL, and the claim of claimant 1 should be approved (although the JOL's Global Inc. claim should be modified as discussed below, while claimant 1's claim should be approved in full).

The Receiver recommends that all other Global-related claims should be rejected, in full.

First, the claims of the 13 class A and class B shareholders of Global Inc. who submitted proofs of claims (reflected on the attached Claims Schedule as claimants numbered 167 to 179) should be rejected because they are derivative investors who did not directly invest in the Receivership Funds.<sup>33</sup> These claims overlap and compete with the JOL's Global Inc. claim, which should be approved subject to the modifications discussed below.

The Receiver's position is that derivative investors' claims should be denied as they are duplicative of the claims of the investment vehicles, which are the direct investors in the Receivership Funds. If the derivative investors' claims were approved, (*i.e.*, the claims that compete with the proofs of claim of the investment vehicles through which they invested) the derivative investors would receive a double recovery.

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<sup>33</sup> These Global Inc. class A and class B shareholders are derivative investors because they invested in an investment vehicle or feeder fund (Global Inc.) that, in turn invested in Global Ltd., a Receivership Fund.

Second, the JOL's claim on behalf of Global Ltd. (claim number 183) should be rejected in full because it is duplicative of the JOL's claim on behalf of Global Inc. and claimant 1's claim.<sup>34</sup>

**ii. The JOL's Global Inc. Claim Should Be Reduced For Three Reasons**

**a. The JOL's Global Inc. Claim Should Be Reduced for Computational Errors**

The JOL's claim on behalf of Global Inc. contained a number of computational errors. The result is that the amount of the JOL's Global Inc. Proof of Claim Form was overstated by approximately \$312,994. The Receiver recommends that this amount be deducted from the claim.

**b. The JOL's Global Inc. Claim Should Be Reduced For Referral Fees**

Certain individual investors in Global Inc. (which are derivative investors in Global Ltd.) received a total of approximately \$195,969 in referral fee payments from the Receivership Entities, apparently for soliciting investors. Because referral fees should be treated as pre- Receivership redemptions, as discussed above, the Receiver recommends that the Allowed Amount for the JOL's Global Inc. claim on behalf of all Global Inc. shareholders be reduced by \$195,969.

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<sup>34</sup> The JOL's claim on behalf of Global Ltd. should be denied for the additional reason that it is rendered unnecessary and moot by the Receiver's recommendation that the Receivership Funds be pooled for the claims process. Only in the absence of pooling would the Receiver need to distribute the proceeds first to the individual Receivership Funds for each of them distribute to their own investors. With pooling, there is no interim step for distribution to individual Receivership Funds like Global Ltd. Instead, the proceeds are distributed directly to all eligible claimants.

**c. The JOL's Global Inc. Claim Should Be Reduced For Its Prior Recovery of Receivership Funds Held in Bermuda**

As explained in a prior report [D.E. 268], on April 8, 2011, the Bermuda courts awarded \$4,004,058.23 (the "Bermuda Funds") to the JOL on behalf of Global Inc. class A and class B. These funds were being held in HSBC Bank of Bermuda accounts for Global Ltd. As a result of the Bermuda Court's ruling, the JOL obtained for Global Inc. (on behalf of Global Inc.'s offshore class A and class B shareholders) a post-Receiver'ship recovery that no other investor was able to receive, and thus these monies will need to be counted against the Global Inc. claim, as a matter of equity.

Technically, the Bermuda Funds obtained by the JOL for Global Inc. (on behalf of Global Inc.'s offshore class A and class B shareholders) is a post-Receiver'ship distribution, not a pre-Receiver'ship redemption, in that the funds were obtained by the JOL *after* the onset of the receivership. However, the Receiver recommends that the Bermuda Funds obtained by the JOL be treated as a pre-Receiver'ship redemption instead, for two reasons. First, treating the recovery as a post-Receiver'ship redemption creates practical difficulties that can lead to objections and litigation over valuation of the health care facilities and hurt the facilities and all investors (as explained in the margin),<sup>35</sup> and second, treating the recovery as a pre-Receiver'ship redemption is

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<sup>35</sup> The practical difficulty arises from the fact that the distribution involves membership interests in the FP Designee, for which there is no set valuation, as opposed to the distribution of cash. The only way to offset the Global Inc.'s recovery to account for the approximately \$4 million in Bermuda funds as a post-receivership redemption is calculate a valuation for FP Designee and then, based on that valuation, determine what percentage of FP Designee is equal to approximately \$4 million, which would be an offset against the amount of FP Designee that Global Inc. would otherwise be awarded. The Receiver believes it is not in the best interests of the investors to pay and wait for the completion of a full-fledged valuation. Nor is it in the best interests of the investors to publish such a valuation. While the Receiver can provide an estimated value for this purpose, which the JOL can challenge through an objection, the Receiver believes it is not in the best interests of the investors as a whole to make the value of the FP Designee a matter of litigation between the Receiver and the JOL merely to resolve this claim, when an alternative method (*i.e.*, treating the funds as a pre-Receiver'ship redemption) is available.

beneficial to the JOL and is a form of compromise (as explained in the margin),<sup>36</sup> and the Receiver's hope is that the JOL and the liquidation committee to which he reports will conclude that Receiver has acted fairly and reasonably and that an objection is not in the best interest of the JOL and the liquidation committee to which the JOL reports.

In sum, the Receiver recommends that the Court: (a) approve Global, Inc.'s claim (claimant 217 on the attached Schedule A) for the Allowed Amount indicated in column 9, (b) approve claimant 1's claim in full, and (c) reject the rest of the Global-related claims.

#### **B. SSR Capital Creditor Claim**

As noted above, the Receiver received six (6) claims during the claims process in connection with two (2) investments made by the SSR Entities. As discussed above, of those six (6) claims, four (4) should be rejected in full and two (2) should be approved for their Allowed Amounts for the benefit of the CVP entity.

In addition to those claims, the management company of the SSR Entities, SSR Capital, submitted a creditor claim to the Receiver during the claims process for approximately \$140,143 (claimant 218).

As previously discussed above, specifically in footnote 22, there was an investment by Hybrid Value into SSR Capital purportedly to help establish SSR Capital and its funds, SSR and

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<sup>36</sup> The benefit to Global Inc. of treating its receipt of the Bermuda Funds as a pre-Receiver'ship redemption as opposed to a post-Receiver'ship distribution is best illustrated with an example. Assume for the purpose of illustration that Global Inc. invested \$10, that it had no genuine pre-Receiver'ship redemptions, that all investors received a *pro rata* 50% recovery, and that the Bermuda Funds recovered by Global Inc., which in truth is a post-Receiver'ship distribution, totaled \$4. Under this simplified scenario, and treating the Bermuda Funds as a post-Receiver'ship distribution (what it is), the results would be as follows: Global Inc.'s NIC would be \$10; Global Inc.'s *pro rata* recovery would be \$5 (50% of NIC); but, because of the \$4 post-receivership distribution, which acts to reduce Global Inc.'s recovery, **Global Inc.'s ultimate recovery would be \$1** (the \$5 of recovery would be offset by the \$4 distribution).

By contrast and using the same simplified scenario, the effect of the treating the Bermuda Funds as a pre-Receiver'ship redemption would be as follows: Global Inc.'s NIC would be \$6 (because its claim of \$10 would be reduced by the "redemption" of the \$4 in Bermuda Funds), and thus **Global Inc.'s ultimate recovery would be \$3** (50% of the \$6 NIC), with no offset for a post-receivership distribution.

SSR II. In return for Hybrid Value's investment into SSR Capital, Hybrid Value received a 1/3 equity ownership percentage of SSR Capital. As a 1/3 owner of SSR Capital, Hybrid Value is entitled to a share of fees paid to SSR Capital.

The Receiver's advisors had numerous discussions with the two owners of SSR Capital. During their discussions, the Receiver's advisors requested and received numerous documents in an attempt to verify SSR Capital's claim. The Receiver's advisors also requested and received access to SSR Capital's outside tax preparers. SSR Capital cooperated in providing documents and information and access to its outside tax preparers. Based on the information obtained, and based upon the input of his advisors, the Receiver concludes that SSR Capital has failed to provide sufficient evidence to support its claim in the amount of \$140,143. For these reasons, claimant 218 does not have a proposed Allowed Amount in column 9 of Schedule A, and its claim should be rejected.

### **VIII. CONCLUSION**

The Receiver respectfully requests that the Court enter orders: (i) approving the Receiver's proposed objection and hearing schedule; (ii) approving the Receiver's recommendations as to Approved and Rejected Claims, and proposed Allowed Amounts in column 9 of Schedule A; and (iii) approving an interim distribution of FP Designee ownership interests to all eligible claimants as reflected in column 5 of Schedule B and barring all investors who submitted Investor Releases from taking any action that was released in the Investor Release.

The Receiver's proposed order approving the Receiver's proposed objection and hearing schedule is attached as **Exhibit C**.



Schedule A  
Receiver's Proposed Allowed Amounts <sup>1</sup>

1	2	3	4	5	6	7	8	9
Claim Category	Claimant No. <sup>1</sup>	Footnote Ref.	Fund Invested In	Received Release	Basis for Objection <sup>2</sup>	Amount Claimed on Proof of Claim Form	NIC per Receivership Entities' Records	Proposed Allowed Amount
Approved Claims	1		GF	Y	N/A	7,595,976	7,595,976	7,595,976
	2		HVF	Y	N/A	110,000	110,000	110,000
	3		HVF	Y	N/A	245,000	245,000	245,000
	4		HVF	Y	N/A	80,000	80,000	80,000
	5		HVF	Y	N/A	130,000	130,000	130,000
	6		HVF	Y	N/A	1,017,000	1,017,000	1,017,000
	7		HVF	Y	N/A	510,000	510,000	510,000
	8		SVF	Y	N/A	28,000,000	28,000,000	28,000,000
	9		SVF	Y	N/A	5,385,667	5,385,667	5,385,667
	10		SVF	Y	N/A	5,000,000	5,000,000	5,000,000
	11		SVF	Y	N/A	4,051,000	4,051,000	4,051,000
	12		SVF	Y	N/A	4,000,000	4,000,000	4,000,000
	13		SVF	Y	N/A	3,650,000	3,650,000	3,650,000
	14		SVF	Y	N/A	3,425,000	3,425,000	3,425,000
	15		SVF	Y	N/A	3,371,968	3,371,968	3,371,968
	16		SVF	Y	N/A	2,110,000	2,110,000	2,110,000
	17		SVF	Y	N/A	2,050,000	2,050,000	2,050,000
	18		SVF	Y	N/A	2,000,000	2,000,000	2,000,000
	19		SVF	Y	N/A	1,700,000	1,700,000	1,700,000
	20		SVF	Y	N/A	1,500,000	1,500,000	1,500,000
	21		SVF	Y	N/A	1,354,000	1,354,000	1,354,000
	22		SVF	Y	N/A	1,300,000	1,300,000	1,300,000
	23		SVF	Y	N/A	1,250,000	1,250,000	1,250,000
	24		SVF	Y	N/A	900,000	900,000	900,000
	25		SVF	Y	N/A	850,000	850,000	850,000
	26		SVF	Y	N/A	833,000	833,000	833,000
	27		SVF	Y	N/A	805,000	805,000	805,000
	28		SVF	Y	N/A	800,000	800,000	800,000
	29		SVF	Y	N/A	700,000	700,000	700,000
	30		SVF	Y	N/A	650,000	650,000	650,000
	31		SVF	Y	N/A	640,000	640,000	640,000
	32		SVF	Y	N/A	600,000	600,000	600,000
	33		SVF	Y	N/A	600,000	600,000	600,000
	34		SVF	Y	N/A	600,000	600,000	600,000
	35		SVF	Y	N/A	567,000	567,000	567,000
	36		SVF	Y	N/A	542,000	542,000	542,000
	37		SVF	Y	N/A	500,000	500,000	500,000
	38		SVF	Y	N/A	500,000	500,000	500,000
	39		SVF	Y	N/A	500,000	500,000	500,000
	40		SVF	Y	N/A	500,000	500,000	500,000
	41		SVF	Y	N/A	500,000	500,000	500,000
	42		SVF	Y	N/A	500,000	500,000	500,000
	43		SVF	Y	N/A	500,000	500,000	500,000
	44		SVF	Y	N/A	500,000	500,000	500,000
	45		SVF	Y	N/A	500,000	500,000	500,000
	46		SVF	Y	N/A	500,000	500,000	500,000
	47		SVF	Y	N/A	500,000	500,000	500,000
	48		SVF	Y	N/A	500,000	500,000	500,000
	49		SVFII	Y	N/A	500,000	500,000	500,000
	50		SVF	Y	N/A	488,000	488,000	488,000
	51		SVF	Y	N/A	450,000	450,000	450,000
	52		SVF	Y	N/A	444,000	444,000	444,000
	53		SVF	Y	N/A	440,000	440,000	440,000
	54		SVF	Y	N/A	420,000	420,000	420,000
	55	3	SVF	N	N/A	5,000,000	5,000,000	5,000,000
	56		SVF	Y	N/A	400,000	400,000	400,000
	57		SVF	Y	N/A	350,000	350,000	350,000
	58		SVF	Y	N/A	341,400	341,400	341,400
	59		SVF	Y	N/A	340,000	340,000	340,000
	60		SVF	Y	N/A	317,510	317,510	317,510
	61		SVF	Y	N/A	300,000	300,000	300,000
	62		SVF	Y	N/A	270,000	270,000	270,000
	63		SVF	Y	N/A	250,000	250,000	250,000
	64		SVF	Y	N/A	250,000	250,000	250,000
	65		SVF	Y	N/A	248,793	248,793	248,793
	66		SVF	Y	N/A	242,510	242,510	242,510

**Schedule A**  
**Receiver's Proposed Allowed Amounts <sup>1</sup>**

1	2	3	4	5	6	7	8	9
Claim Category	Claimant No. <sup>1</sup>	Footnote Ref.	Fund Invested In	Received Release	Basis for Objection <sup>2</sup>	Amount Claimed on Proof of Claim Form	NIC per Receivership Entities' Records	Proposed Allowed Amount
	67		SVF	Y	N/A	227,981	227,981	227,981
	68		SVF	Y	N/A	217,235	217,235	217,235
	69		SVF	Y	N/A	207,000	207,000	207,000
	70		SVF	Y	N/A	198,000	198,000	198,000
	71		SVF	Y	N/A	197,000	197,000	197,000
	72		SVF	Y	N/A	175,000	175,000	175,000
	73		SVF	Y	N/A	175,000	175,000	175,000
	74		SVF	Y	N/A	150,000	150,000	150,000
	75		SVFII	Y	N/A	1,750,000	1,750,000	1,750,000
	76		SVF	Y	N/A	150,000	150,000	150,000
	77		SVF	Y	N/A	150,000	150,000	150,000
	78		SVF	Y	N/A	140,000	140,000	140,000
	79		SVF	Y	N/A	127,500	127,500	127,500
	80		SVF	Y	N/A	123,495	123,495	123,495
	81		SVF	Y	N/A	110,000	110,000	110,000
	82		SVF	Y	N/A	100,000	100,000	100,000
	83		SVF	Y	N/A	100,000	100,000	100,000
	84		SVF	Y	N/A	66,800	66,800	66,800
	85		SVF	Y	N/A	54,250	54,250	54,250
	86		SVFII	Y	N/A	800,000	800,000	800,000
	87		SVFII	Y	N/A	500,000	500,000	500,000
	88		SVFII	Y	N/A	500,000	500,000	500,000
	89		SVFII	Y	N/A	500,000	500,000	500,000
	90		SVFII	Y	N/A	1,200,000	1,200,000	1,200,000
	91		SVFII	Y	N/A	500,000	500,000	500,000
	92		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	93	3	SVFII	N	N/A	125,000	125,000	125,000
	94	3	SVFII	N	N/A	375,000	375,000	375,000
	95		SVFII	Y	N/A	250,000	250,000	250,000
	96	3	SVFII	N	N/A	500,000	500,000	500,000
	97		SVFII	Y	N/A	600,000	600,000	600,000
	98		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	99		SVF	Y	N/A	25,000	25,000	25,000
	100		SVFII	Y	N/A	500,000	500,000	500,000
	101		SVFII	Y	N/A	500,000	500,000	500,000
	102		SVFII	Y	N/A	160,000	160,000	160,000
	103		SVFII	Y	N/A	2,500,000	2,500,000	2,500,000
	104		SVFII	Y	N/A	175,000	175,000	175,000
	105		SVFII	Y	N/A	500,000	500,000	500,000
	106		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	107		SVFII	Y	N/A	600,000	600,000	600,000
	108		SVFII	Y	N/A	500,000	500,000	500,000
	109		SVFII	Y	N/A	600,000	600,000	600,000
	110		SVFII	Y	N/A	500,000	500,000	500,000
	111		SVFII	Y	N/A	75,000	75,000	75,000
	112		SVFII	Y	N/A	1,500,000	1,500,000	1,500,000
	113		SVFII	Y	N/A	375,000	375,000	375,000
	114		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	115		SVFII	Y	N/A	7,000,000	7,000,000	7,000,000
	116		SVFII	Y	N/A	1,270,000	1,270,000	1,270,000
	117		SVFII	Y	N/A	4,000,000	4,000,000	4,000,000
	118		SVFII	Y	N/A	1,600,000	1,600,000	1,600,000
	119		SVFII	Y	N/A	2,000,000	2,000,000	2,000,000
	120		SVFII	Y	N/A	5,000,000	5,000,000	5,000,000
	121		SVFII	Y	N/A	500,000	500,000	500,000
	122		SVFII	Y	N/A	500,000	500,000	500,000
	123		SVFII	Y	N/A	500,000	500,000	500,000
	124		SVFII	Y	N/A	2,250,000	2,250,000	2,250,000
	125		SVFII	Y	N/A	985,000	985,000	985,000
	126		SVFII	Y	N/A	400,000	400,000	400,000
	127		SVFII	Y	N/A	100,000	100,000	100,000
	128		SVFII	Y	N/A	646,000	646,000	646,000
	129		SVFII	Y	N/A	500,000	500,000	500,000
	130		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	131		SVFII	Y	N/A	875,000	875,000	875,000
	132		SVFII	Y	N/A	1,325,000	1,325,000	1,325,000

Schedule A  
Receiver's Proposed Allowed Amounts <sup>1</sup>

1	2	3	4	5	6	7	8	9
Claim Category	Claimant No. <sup>1</sup>	Footnote Ref.	Fund Invested In	Received Release	Basis for Objection <sup>2</sup>	Amount Claimed on Proof of Claim Form	NIC per Receivership Entities' Records	Proposed Allowed Amount
	133		SVFII	Y	N/A	30,900,000	30,900,000	30,900,000
	134		SVFII	Y	N/A	3,500,000	3,500,000	3,500,000
	135		SVFII	Y	N/A	1,500,000	1,500,000	1,500,000
	136		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	137		SVFII	Y	N/A	1,500,000	1,500,000	1,500,000
	138		SVFII	Y	N/A	500,000	500,000	500,000
	139		SVFII	Y	N/A	500,000	500,000	500,000
	140		SVFII	Y	N/A	1,780,000	1,780,000	1,780,000
	141		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	142		SVFII	Y	N/A	500,000	500,000	500,000
	143		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	144		SVFII	Y	N/A	500,000	500,000	500,000
	145		SVFII	Y	N/A	2,000,000	2,000,000	2,000,000
	146		SVFII	Y	N/A	1,500,000	1,500,000	1,500,000
	147		SVFII	Y	N/A	250,000	250,000	250,000
	148		SVFII	Y	N/A	1,000,000	1,000,000	1,000,000
	149		SVFII	Y	N/A	1,250,000	1,250,000	1,250,000
	150		SVFII	Y	N/A	500,000	500,000	500,000
	151		SVFII	Y	N/A	2,800,000	2,800,000	2,800,000
	152		SVF	Y	N/A	1,000,000	1,000,000	1,000,000
	153		SVF	Y	N/A	144,000	144,000	144,000
	154	4	SVF	N/A	N/A		888,191	888,191
	155	4	SVFII	N/A	N/A		500,000	500,000
	156	4	HVF	N/A	N/A		1,089,749	1,089,749
Rejected in Full Claims	157		SVF	Y	Net Redeemer	(144,103)	(144,103)	-
	158		SVF	Y	Net Redeemer	600,000	(12,000)	-
	159		SVF	Y	Net Redeemer	63,293	(31,852)	-
	160		SVF	Y	Net Redeemer	(400,000)	(400,000)	-
	161		SVF	Y	Net Redeemer	(154,000)	(154,500)	-
	162		SVF	Y	Net Redeemer	172,731	(27,269)	-
	163		SVF	Y	Net Redeemer	2,000,000	(78,338)	-
	164	5	SVF	Y	Net Redeemer		(78,338)	-
	165		SVF	Y	Net Redeemer	(123,000)	(123,000)	-
	166		SVF	Y	Net Redeemer	(140,700)	(230,700)	-
	167		GF	Y	Duplicative of JOL Claim	415,800	415,800	-
	168		GF	Y	Duplicative of JOL Claim	236,072	230,897	-
	169		GF	Y	Duplicative of JOL Claim	584,834	584,834	-
	170		GF	Y	Duplicative of JOL Claim	500,000	500,000	-
	171		GF	Y	Duplicative of JOL Claim	891,550	891,250	-
	172		GF	Y	Duplicative of JOL Claim	730,000	730,000	-
	173		GF	Y	Duplicative of JOL Claim	2,000,000	2,000,000	-
	174		GF	Y	Duplicative of JOL Claim	250,000	250,000	-
	175		GF	Y	Duplicative of JOL Claim	1,500,000	1,500,000	-
	176		GF	Y	Duplicative of JOL Claim	2,400,000	847,766	-
	177		GF	Y	Duplicative of JOL Claim	764,490	1,004,640	-
	178		GF	N	Duplicative of JOL Claim	368,455	353,374	-
	179		GF	Y	Duplicative of JOL Claim	9,000,000	9,000,000	-
	180		SVF	Y	Same Entity as 181 - Combined Claims Result in Net Redeemer Status	125,909	126,253	-
	181		HVF	Y	Same Entity as 180 - Combined Claims Result in Net Redeemer Status	(375,392)	(416,382)	-
	182		GF	Y	Non-Investor	127,771	-	-
	183	6	SVF, HVF	Y	Non-Investor	129,633,448	-	-
	209		SVF	Y	Competing Claim	10,755,000	10,755,000	-
	210		SVF	Y	Competing Claim	23,690,000	23,690,000	-
	211		SVF	Y	Competing Claim	23,690,000	23,690,000	-
	212		SVF	Y	Competing Claim	10,755,000	10,755,000	-
	218		SVF	Y	Unsubstantiated Claim	140,143		-
Rejected in Part Claims	184		SVFII	Y	Competing Claim	500,000	500,000	166,667
	185		SVFII	Y	Competing Claim	500,000	500,000	166,667
	186		SVFII	Y	Competing Claim	500,000	500,000	166,667
	187		SVF	Y	NIC is Different from Claim Amount	568,722	125,000	125,000
	188		SVF	Y	NIC is Different from Claim Amount	195,750	191,659	191,659
	189		SVF	Y	NIC is Different from Claim Amount	761,860	661,860	661,860
	190		SVF	Y	NIC is Different from Claim Amount	105,000	80,000	80,000

**Schedule A**  
**Receiver's Proposed Allowed Amounts <sup>1</sup>**

1	2	3	4	5	6	7	8	9
Claim Category	Claimant No. <sup>1</sup>	Footnote Ref.	Fund Invested In	Received Release	Basis for Objection <sup>2</sup>	Amount Claimed on Proof of Claim Form	NIC per Receivership Entities' Records	Proposed Allowed Amount
	191		SVF	Y	NIC is Different from Claim Amount	6,462,797	6,322,000	6,322,000
	192		SVF	Y	NIC is Different from Claim Amount	1,500,000	1,455,074	1,455,074
	193		SVF	Y	NIC is Different from Claim Amount	957,961	420,195	420,195
	194		SVF	Y	NIC is Different from Claim Amount	495,856	201,000	201,000
	195		SVF	Y	NIC is Different from Claim Amount	1,000,000	800,000	800,000
	196		SVF	Y	NIC is Different from Claim Amount	225,000	35,000	35,000
	197		SVF	Y	NIC is Different from Claim Amount	735,296	430,000	430,000
	198		SVF	Y	NIC is Different from Claim Amount	1,500,000	1,425,000	1,425,000
	199		SVF	Y	NIC is Different from Claim Amount	174,500	143,787	143,787
	200		SVFII	Y	NIC is Different from Claim Amount	2,500,000	2,000,000	2,000,000
	201		SVF	Y	NIC is Different from Claim Amount	2,063,483	1,375,000	1,375,000
	202		SVF	Y	NIC is Different from Claim Amount	325,093	324,800	324,800
	203		SVF	Y	NIC is Different from Claim Amount	442,700	442,400	442,400
	204	5	SVF	Y	NIC is Different from Claim Amount		499,000	499,000
	205		SVF	Y	NIC is Different from Claim Amount	646,000	645,000	645,000
	206		SVF	Y	NIC is Different from Claim Amount	165,542	165,543	165,543
	207		SVF	Y	NIC is Different from Claim Amount	1,161,026	1,168,655	1,168,655
	208	7	SVF	Y	Claimant No Longer Exists	550,000	550,000	550,000
	213	8	SVF	Y	Claimant Sold its Interest	23,690,000	23,690,000	23,690,000
	214	8	SVF	Y	Claimant Sold its Interest	10,755,000	10,755,000	10,755,000
	215		HVF	Y	Claimant Received Unwarranted Payments	130,000	130,000	24,276
	216		SVF	Y	Claimant Received Unwarranted Payments	151,500	151,500	28,290
	217	9	GF	Y	See Section VI.A. of Receiver's Motion	124,533,150	124,220,156	120,020,129
						<b>617,182,621</b>	<b>481,842,986</b>	<b>390,785,693</b>

**Note 1:** There were a total of 218 claims. The claimant no. has been assigned to keep the identities of the claimants confidential. However, the identities of certain institutional investors have been disclosed - each of which has identified itself in filings and made representations to the Court.

**Note 2:** As referenced in the Receiver's motion, the basis for the objection listed in this column may not be the only basis for objection for each investor.

**Note 3:** These investors did not submit releases with their respective proof of claim forms. While a proposed Allowed Amount for these investors is reflected in column 9 above, these investors have not been assigned a percentage ownership in FP Designee on Schedule B.

**Note 4:** Because Founding Partners Capital Management Company, which invested in SVF, SVFII, and HVF, is a Receivership Entity, it did not file formal Proof of Claim Forms.

**Note 5:** The "Amount Claimed on Proof of Claim Form" column has been left blank for these investors because the claimed amount was unspecified. Based on the supporting documentation that was provided with the proof of claim form, it was not possible to determine the amount claimed.

**Note 6:** Because the Receiver is recommending consolidation of the Receivership Funds, claimant 183, which is a Receivership Fund, is not considered an "investor."

**Note 7:** The Receiver has received written and signed documentation indicating that claimant 208 has been liquidated, with its assets transferred to a liquidating trust. Accordingly, the Receiver recommends that any distribution associated with this claim be distributed to the liquidating trust.

**Note 8:** The Receiver has received written and signed documentation indicating that claimants 213 and 214, have sold their interests to CVP. Accordingly, the Receiver recommends that any distribution associated with these claims be distributed to CVP.

**Note 9:** Claimant 217 is an institutional investor that filed a proof of claim on behalf of the Global Fund Class A Inc. and B Inc. investors representing the net investment of such investors.

**Schedule B**  
**Receiver's Proposed Approved FP Designee Distributions**

1	2	3	4	5
Claimant No.	Footnote Ref.	Fund Invested In	Proposed Allowed Amount	Proposed Approved FP Designee Distributions (%)
1		GF	7,595,976	1.97%
2		HVF	110,000	0.03%
3		HVF	245,000	0.06%
4		HVF	80,000	0.02%
5		HVF	130,000	0.03%
6		HVF	1,017,000	0.26%
7		HVF	510,000	0.13%
8		SVF	28,000,000	7.28%
9		SVF	5,385,667	1.40%
10		SVF	5,000,000	1.30%
11		SVF	4,051,000	1.05%
12		SVF	4,000,000	1.04%
13		SVF	3,650,000	0.95%
14		SVF	3,425,000	0.89%
15		SVF	3,371,968	0.88%
16		SVF	2,110,000	0.55%
17		SVF	2,050,000	0.53%
18		SVF	2,000,000	0.52%
19		SVF	1,700,000	0.44%
20		SVF	1,500,000	0.39%
21		SVF	1,354,000	0.35%
22		SVF	1,300,000	0.34%
23		SVF	1,250,000	0.32%
24		SVF	900,000	0.23%
25		SVF	850,000	0.22%
26		SVF	833,000	0.22%
27		SVF	805,000	0.21%
28		SVF	800,000	0.21%
29		SVF	700,000	0.18%
30		SVF	650,000	0.17%
31		SVF	640,000	0.17%
32		SVF	600,000	0.16%
33		SVF	600,000	0.16%
34		SVF	600,000	0.16%
35		SVF	567,000	0.15%
36		SVF	542,000	0.14%
37		SVF	500,000	0.13%
38		SVF	500,000	0.13%
39		SVF	500,000	0.13%
40		SVF	500,000	0.13%
41		SVF	500,000	0.13%
42		SVF	500,000	0.13%
43		SVF	500,000	0.13%

**Schedule B**  
**Receiver's Proposed Approved FP Designee Distributions**

1	2	3	4	5
Claimant No.	Footnote Ref.	Fund Invested In	Proposed Allowed Amount	Proposed Approved FP Designee Distributions (%)
44		SVF	500,000	0.13%
45		SVF	500,000	0.13%
46		SVF	500,000	0.13%
47		SVF	500,000	0.13%
48		SVF	500,000	0.13%
49		SVFII	500,000	0.13%
50		SVF	488,000	0.13%
51		SVF	450,000	0.12%
52		SVF	444,000	0.12%
53		SVF	440,000	0.11%
54		SVF	420,000	0.11%
56		SVF	400,000	0.10%
57		SVF	350,000	0.09%
58		SVF	341,400	0.09%
59		SVF	340,000	0.09%
60		SVF	317,510	0.08%
61		SVF	300,000	0.08%
62		SVF	270,000	0.07%
63		SVF	250,000	0.06%
64		SVF	250,000	0.06%
65		SVF	248,793	0.06%
66		SVF	242,510	0.06%
67		SVF	227,981	0.06%
68		SVF	217,235	0.06%
69		SVF	207,000	0.05%
70		SVF	198,000	0.05%
71		SVF	197,000	0.05%
72		SVF	175,000	0.05%
73		SVF	175,000	0.05%
74		SVF	150,000	0.04%
75		SVFII	1,750,000	0.45%
76		SVF	150,000	0.04%
77		SVF	150,000	0.04%
78		SVF	140,000	0.04%
79		SVF	127,500	0.03%
80		SVF	123,495	0.03%
81		SVF	110,000	0.03%
82		SVF	100,000	0.03%
83		SVF	100,000	0.03%
84		SVF	66,800	0.02%
85		SVF	54,250	0.01%
86		SVFII	800,000	0.21%
87		SVFII	500,000	0.13%

**Schedule B**  
**Receiver's Proposed Approved FP Designee Distributions**

1	2	3	4	5
Claimant No.	Footnote Ref.	Fund Invested In	Proposed Allowed Amount	Proposed Approved FP Designee Distributions (%)
88		SVFII	500,000	0.13%
89		SVFII	500,000	0.13%
90		SVFII	1,200,000	0.31%
91		SVFII	500,000	0.13%
92		SVFII	1,000,000	0.26%
95		SVFII	250,000	0.06%
97		SVFII	600,000	0.16%
98		SVFII	1,000,000	0.26%
99		SVF	25,000	0.01%
100		SVFII	500,000	0.13%
101		SVFII	500,000	0.13%
102		SVFII	160,000	0.04%
103		SVFII	2,500,000	0.65%
104		SVFII	175,000	0.05%
105		SVFII	500,000	0.13%
106		SVFII	1,000,000	0.26%
107		SVFII	600,000	0.16%
108		SVFII	500,000	0.13%
109		SVFII	600,000	0.16%
110		SVFII	500,000	0.13%
111		SVFII	75,000	0.02%
112		SVFII	1,500,000	0.39%
113		SVFII	375,000	0.10%
114		SVFII	1,000,000	0.26%
115		SVFII	7,000,000	1.82%
116		SVFII	1,270,000	0.33%
117		SVFII	4,000,000	1.04%
118		SVFII	1,600,000	0.42%
119		SVFII	2,000,000	0.52%
120		SVFII	5,000,000	1.30%
121		SVFII	500,000	0.13%
122		SVFII	500,000	0.13%
123		SVFII	500,000	0.13%
124		SVFII	2,250,000	0.58%
125		SVFII	985,000	0.26%
126		SVFII	400,000	0.10%
127		SVFII	100,000	0.03%
128		SVFII	646,000	0.17%
129		SVFII	500,000	0.13%
130		SVFII	1,000,000	0.26%
131		SVFII	875,000	0.23%
132		SVFII	1,325,000	0.34%
133		SVFII	30,900,000	8.03%

**Schedule B**  
**Receiver's Proposed Approved FP Designee Distributions**

1	2	3	4	5
Claimant No.	Footnote Ref.	Fund Invested In	Proposed Allowed Amount	Proposed Approved FP Designee Distributions (%)
134		SVFII	3,500,000	0.91%
135		SVFII	1,500,000	0.39%
136		SVFII	1,000,000	0.26%
137		SVFII	1,500,000	0.39%
138		SVFII	500,000	0.13%
139		SVFII	500,000	0.13%
140		SVFII	1,780,000	0.46%
141		SVFII	1,000,000	0.26%
142		SVFII	500,000	0.13%
143		SVFII	1,000,000	0.26%
144		SVFII	500,000	0.13%
145		SVFII	2,000,000	0.52%
146		SVFII	1,500,000	0.39%
147		SVFII	250,000	0.06%
148		SVFII	1,000,000	0.26%
149		SVFII	1,250,000	0.32%
150		SVFII	500,000	0.13%
151		SVFII	2,800,000	0.73%
152		SVF	1,000,000	0.26%
153		SVF	144,000	0.04%
154	1	SVF	888,191	0.23%
155	1	SVFII	500,000	0.13%
156	1	HVF	1,089,749	0.28%
184		SVFII	166,667	0.04%
185		SVFII	166,667	0.04%
186		SVFII	166,667	0.04%
187		SVF	125,000	0.03%
188		SVF	191,659	0.05%
189		SVF	661,860	0.17%
190		SVF	80,000	0.02%
191		SVF	6,322,000	1.64%
192		SVF	1,455,074	0.38%
193		SVF	420,195	0.11%
194		SVF	201,000	0.05%
195		SVF	800,000	0.21%
196		SVF	35,000	0.01%
197		SVF	430,000	0.11%
198		SVF	1,425,000	0.37%
199		SVF	143,787	0.04%
200		SVFII	2,000,000	0.52%
201		SVF	1,375,000	0.36%
202		SVF	324,800	0.08%
203		SVF	442,400	0.11%



**Schedule B**  
**Receiver's Proposed Approved FP Designee Distributions**

1	2	3	4	5
Claimant No.	Footnote Ref.	Fund Invested In	Proposed Allowed Amount	Proposed Approved FP Designee Distributions (%)
204		SVF	499,000	0.13%
205		SVF	645,000	0.17%
206		SVF	165,543	0.04%
207		SVF	1,168,655	0.30%
208	2	SVF	550,000	0.14%
213	3	SVF	23,690,000	6.16%
214	3	SVF	10,755,000	2.80%
215		HVF	24,276	0.01%
216		SVF	28,290	0.01%
217	4	GF	120,020,129	31.19%
			<b>384,785,693</b>	<b>100.00%</b>

Note 1: Because Founding Partners Capital Management Company, which invested in SVF, SVFII, and HVF, is a Receivership Entity, it did not file formal proof of claim forms.

Note 2: The Receiver has received written and signed documentation indicating that claimant 208 has been liquidated, with its assets transferred to a liquidating trust. Accordingly, the Receiver recommends that the interim distribution associated with this claim be distributed to the liquidating trust.

Note 3: The Receiver has received written and signed documentation indicating that claimants 213 and 214, have sold their interests to CVP. Accordingly, the Receiver recommends that the interim distribution associated with these claims be distributed to CVP.

Note 4: Claimant 217 is an institutional investor that filed a proof of claim on behalf of the Global Fund Class A Inc. and B Inc. investors representing the net investment of such investors.

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 COMPANY,  
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.

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**ORDER APPROVING RECEIVER'S RECOMMENDATION  
FOR PROPOSED OBJECTION AND HEARING SCHEDULE**

This matter comes before the Court on the Receiver's Motion for Court Approval of: (a) the Receiver's recommendations concerning claims; (b) an interim distribution of interests in the FP Designee (as defined in the Receiver's previous filings); and (c) the Receiver's proposed objection and hearing schedule (the "Motion"), filed on July 10, 2013. The Securities and Exchange Commission does not object to the relief sought by Receiver in the Motion. Having considered the Motion, and being otherwise fully advised, it is

**ORDERED and ADJUDGED:**

1. The Receiver's Motion (Doc. 395) is GRANTED in part;

2. The Court approves the Receiver's recommended objection and hearing schedule as follows:

- A. Claimants will have forty (40) days from the date of this Order (*i.e.* until \_\_\_\_\_, 2013) to object in writing to the Receiver's recommendations. Claimants shall file their objections with the Court and send their objections to the Receiver at his office, care of Jonathan Etra, Broad and Cassel, 2 South Biscayne Boulevard, Suite 2100, Miami, Florida 33131 **to be received** no later than \_\_\_\_\_, 2013;
- B. If a claimant does not object within the time frame provided, the Receiver's recommendations will be deemed sustained with prejudice as to that claimant, and the right of that claimant to object will be deemed irrevocably waived;
- C. Within forty (40) days of the deadline for claimant objections (*i.e.*, by \_\_\_\_\_, 2013) the Receiver shall file his responses to timely-filed objections;
- D. A hearing will be set for a date after the Receiver's responses to objections are due to: (i) rule on any objections that are timely filed; (ii) rule on the Receiver's recommendations on Allowed Amounts and FP Designee Distributions; and (iii) determine whether the proposed issuance of securities in the first interim distribution meets the fairness requirement under the securities laws; and
- E. The Receiver shall serve a copy of this Order on each claimant, using the most updated contact information available to him, and shall post a copy of this

order on the Receivership website: <http://www.foundingpartners-receivership.com>.

**DONE AND ORDERED** at Fort Myers, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2013.

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THE HONORABLE JOHN E. STEELE  
United States District Court Judge

Copies to: Counsel of record