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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

DANIEL S. NEWMAN, as RECEIVER for FOUNDING PARTNERS STABLE-VALUE FUND, LP; FOUNDING PARTNERS STABLE-VALUE FUND II, LP; FOUNDING PARTNERS GLOBAL FUND, LTD.; and FOUNDING PARTNERS HYBRID-VALUE FUND, L.P., Plaintiff, vs. ERNST & YOUNG, LLP, a Delaware Limited Liability Partnership; and MAYER BROWN LLP, an Illinois Limited Liability Partnership, Defendants.	**Case No. 10-49061**

RECEIVER'S MOTION TO AMEND COMPLAINT

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RECEIVER'S MOTION TO AMEND

I. INTRODUCTION

Daniel Newman, in his capacity as the Court Appointed Receiver for the Founding Partners entities (the "Receiver"), brings this Motion pursuant to Rule 1.190 of the Florida Rules of Civil Procedure, for permission to amend the Complaint in this action against the Defendants Ernst & Young, LLP ("E&Y"), and Mayer Brown LLP.

The Founding Partners entities consist of Founding Partners Capital Management ("FPCM") and four Funds: 1) Founding Partners Stable-Value Fund, LP ("Stable-Value"); 2) Founding Partners Stable-Value Fund II ("Stable-Value II"); 3) Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value"); and 4) Founding Partners Global Fund, Ltd. ("Global"). FPCM was the general partner of the first three funds, and the investment manager for Global, a Cayman Island fund.

The Receiver was appointed by the United States District Court for the Middle District of Florida, in response to a Complaint and motions for emergency relief from the Securities and Exchange Commission ("SEC"), following an investigation of a massive $550 million fraud by William Gunlicks and FPCM. SEC Complaint for Injunctive And Other Relief, ¶ 1.

A. The Current Pleadings And Other Litigation

This action was initially filed on December 30, 2010; an Amended Complaint was filed on April 7, 2011, to add the claims of certain investors/limited partners in the Founding Partners Funds who had assigned their claims to the Receiver, and a Second Amended Complaint was filed on April 25, 2011, to add the claims of additional investors/limited partners in the Founding Partners Funds who had also assigned their claims to the Receiver, but whose assignments were received after the First Amended Complaint was filed.

The Defendant Mayer Brown moved to dismiss the Receiver's Second Amended Complaint for lack of personal jurisdiction and on *forum non conveniens* grounds. The Court denied Mayer Brown's motion on March 18, 2013, and Mayer Brown appealed the denial of the motion to dismiss for lack of personal jurisdiction. The District Court of Appeal for the Fourth District affirmed the denial of Mayer Brown's motion on November 21, 2013, which became final on December 6, 2013.

The claims against E&Y and Mayer Brown are concerned primarily with the recovery of damages to the Funds that resulted from the same fraud described in the SEC's Complaint, and concerning the use of funds from the Founding Partners Funds and their investors by two Sun Capital entities. SEC Complaint, ¶¶ 2-5. The Receiver's claims against the Sun Capital entities were the subject of separate litigation that concluded with a settlement agreement, approved by the United States District Court, and the Settlement Transaction approved by the court closed on March 17, 2014.

In a separate lawsuit filed in Cook County, Illinois, William Gunlicks (who was removed from his positions at FPCM by the appointment of the Receiver), alleged claims against E&Y (which was subsequently dropped as a defendant in later amendments to the complaint in that action), and Mayer Brown. Gunlicks purported to be asserting "the same claims" asserted by the Receiver in this action. Mayer Brown moved to dismiss the Complaint in Illinois, and the Receiver intervened in that action for the limited purpose of joining in the motion to dismiss, because the claims that Gunlicks was attempting to prosecute in Illinois belonged to the Receiver, and were being asserted in this action.

The Receiver sought relief from the United States District Court in the Receivership action, asking that court to hold Gunlicks in contempt for his interference with the Receiver's authority with respect to the Founding Partners entities, including FPCM. That relief was denied after Gunlicks represented to the District Court that he was asserting only his "personal" causes of action in Illinois, although Gunlicks subsequently represented to the Illinois courts that he was, in fact, asserting "derivative" claims on behalf of FPCM.

Gunlicks' Illinois action was dismissed with leave to amend, until a final judgment was entered dismissing Gunlicks' Fourth Amended Complaint without further leave to amend.

Gunlicks appealed to the Appellate Court of Illinois, which affirmed the dismissal of the Gunlicks action on August 19, 2014. The mandate of the Illinois appellate court was issued on October 24, 2014.

B. The Proposed Amendments

The proposed Third Amended Complaint is attached as Exhibit A to this Motion, and a redline of the proposed Third Amended Complaint against the Second Amended Complaint is attached as Exhibit B.

The Receiver's proposed amendments allege additional facts with respect to the claims already included in the Second Amended Complaint, including additional facts and detail concerning the investments by investors/limited partners who assigned their claims to the Receiver (the same assignors identified in the Second Amended Complaint), including the dates of their investments and certain materials received and relied upon by them with respect to those investments. The assigned claims are otherwise unchanged.

The proposed amendments also add a claim for fraud and a claim for negligent misrepresentation against Mayer Brown, based upon its own material misrepresentations and omissions to the SEC during the course of the SEC's first investigation into the conduct of Gunlicks and FPCM during the period 2002-2007, which resulted in (1) the SEC's failure to discover the already existing and continuing fraud, and (2) an SEC Order that omitted any requirement of a "compliance monitor" with authority to review FPCM's disclosures and to take action to prevent further violations of the securities laws, followed by (3) a letter to investors (drafted by Mayer Brown) advising that Gunlicks and FPCM had "successfully resolved the Securities and Exchange Commission investigation" when, in fact, they had only succeeded in concealing the fraud from the SEC, allowing the fraud to continue, and increasing the damages from the fraud to the Funds and to their investors, including the assignors.

II. THE RECEIVER SHOULD BE PERMITTED TO AMEND HIS PLEADINGS

Rule 1.190(a) and (e) authorize the amendment of pleadings "[a]t any time in furtherance of justice, upon such terms as may be just." A motion for leave to amend should be granted unless it clearly appears the amendment would prejudice the opposing party, the privilege to amend has been abused, or the amendment would be futile. *See, e.g, Bill Williams Air Conditioning & Heating v. Haymarket Coop. Bank,* 592 So.2d 302, 305 (Fla. 1st DCA 1992), rev. dismissed, 598 So.2d 76 (Fla. 1992). None of those factors is present here.

The new claims for relief against Mayer Brown arise from the same fraud and the concealment of that fraud during the first SEC investigation, described in the current pleadings:

> 213. **Commencing in 2002, the SEC began investigating FPCM for violations of various federal securities laws. Mayer Brown represented FPCM before the SEC and facilitated the production of documents by FPCM to the SEC. Mayer Brown also negotiated with the SEC on FPCM's behalf**.
>
> 214. On or about December 3, 2007, FPCM and the SEC settled the allegations against FPCM resulting in the issuance of a Cease-and-Desist Order. FPCM was required to cease-and-desist violating Section 17(a) (2) of the Securities Act of 1933 which proscribes obtaining investments through the use of untrue statements of material fact.
>
> 215. In the Commission Action, the SEC alleged that FPCM had violated the terms of the December 3, 2007 Cease-and-Desist Order. **Mayer Brown failed to advise Founding Partners' limited partners and other innocent decision-makers that the offering memoranda prepared by Mayer Brown included representations that Mayer Brown knew to be inaccurate**, and failed to advise that the continued use of those offering memoranda violated, among other things, the Cease-and-Desist Order.

Original Complaint, p. 57 (emphasis added); and see paragraphs 234-236, Second Amended Complaint.

The original Complaint (and the current Second Amended Complaint) have already alleged that Mayer Brown was engaged in the first SEC investigation, and that Mayer Brown knew of the existence of the fraud during the period when the first SEC investigation was continuing – those allegations were the basis for the claims in the original Complaint and in the Second Amended Complaint for Mayer Brown's knowingly aiding and abetting breaches of fiduciary duty and aiding and abetting fraud by Gunlicks.

The proposed amendments add specific allegations concerning Mayer Brown's own representations to the SEC in the course of the first SEC investigation, and in the Cover Letter sent to investors at the conclusion of the first investigation, that concealed the ongoing fraud and prevented its earlier discovery, which allowed the fraud to continue – and damages from the fraud to increase – until the fraud was discovered by the SEC and stopped by the filing of the SEC Complaint in 2009. The new allegations and claims against Mayer Brown relate to its role in concealing the fraud already described in the original Complaint and the existing pleadings, during that first SEC investigation, and thus arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fla. R. Civ. P. 1.190(c).

The proposed amendment is not futile, because the proposed amended pleadings states claims for fraud and negligent misrepresentation against Mayer Brown. The futility test "applies in cases where a party has repeatedly attempted to state a cause of action *where none exists* and any *further attempts would be futile*." *Scott v. Trevett*, 751 So.2d 616, 618 (Fla. 4th DCA 1999) (emphasis added). Here, causes of action against Mayer Brown for fraud and for negligent misrepresentation exist, and the Receiver has stated both claims in the amended pleading, building upon the claims alleged in the current pleadings.

The allegations in the amended pleading demonstrate that Mayer Brown attorneys were aware that Founding Partners funds were being used for improper purposes, and yet made material misstatements and omissions to the SEC and limited partners about the use of those funds and about the first SEC investigation. Those misrepresentation and omissions were made with the expectation and intent that others would rely on those representations and omissions, as others did in fact rely, and as a result of that reliance were injured.

The defendants would not be prejudiced by the amendment. "If the amendment simply restates an issue already present in the case of which the opposing party is aware and needs no extensive preparation for trial, then there may be no prejudice to the opposing party and great prejudice to the moving party to deny the amendment." *Newman v. State Farm Mut. Auto. Ins. Co*., 858 So.2d 1205, 1206 (Fla. 4th DCA 2003). In that case, the court of appeals found the trial court abused its discretion in denying a second amended complaint after discovery and two months before trial, because the defendant was aware of the issue from the deposition and there was no argument that additional discovery would be required. *Id*. Here, there are no similar considerations of reopening discovery or surprise before trial.

The allegations add specificity with respect to Mayer Brown's knowledge of the continuing fraud during the first SEC investigation, and its responsibility for and role in concealing the fraud from the SEC, and from the Funds and their investors.

"In order for a claim of fraud in the inducement to withstand a motion to dismiss, it must allege fraud with the requisite particularity required by Florida Rule of Civil Procedure 1.120(b), including who made the false statement, the substance of the false statement, the time frame in which it was made and the context in which the statement was made." *Eagletech Communs., Inc. v. Bryn Mawr Inv. Group, Inc.,* 79 So. 3d 855, 861–62 (Fla. 4th DCA 2012) (*quoting Bankers Mut. Capital Corp. v. U.S. Fid. & Guar. Co.,* 784 So. 2d 485, 490 (Fla. 4th DCA 2001)).

The elements of fraud are: (1) a false statement concerning a specific material fact; (2) the maker's knowledge that the representation is false; (3) an intention that the representation induces another's reliance; and (4) consequent injury by the other party acting in reliance on the representation. *Wadlington v. Cont'l Med. Servs.,* 907 So. 2d 631, 632 (Fla. 4th DCA 2005). Fraud can occur by omission, and one who undertakes to disclose material information has a duty to disclose that information fully. *ZC Ins. Co. v. Brooks,* 847 So.2d 547, 551 (Fla. 4th DCA 2003) (*citing Gutter v. Wunker,* 631 So.2d 1117, 1118-19 (Fla. 4th DCA 1994)).

The original Complaint and Second Amended Complaint have alleged the existence of the massive fraud described in the SEC's 2009 Complaint (paragraphs 31-36, 100-115, and Part XII), that Mayer Brown made affirmative misrepresentations to the Funds and their investors to conceal the existence of the fraud (Part XVII, and paragraph 343), and that Mayer Brown knowingly provided substantial assistance to the fraud by aiding and abetting breaches of fiduciary duty (Count VIII, see paragraphs 409-410)[1] and by aiding and abetting fraud (Count IX, see paragraphs 421-422).[2]

The proposed amendments describe Mayer Brown's role in the same fraud, during the course of the first SEC investigation, including misrepresentations and omissions to the SEC, which concealed and delayed the discovery of the fraud by the SEC and by the investors in the

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1 The existing claim for aiding and abetting breaches of fiduciary duty in the Second Amended Complaint is based upon Mayer Brown's knowledge of the fraud, and *knowingly* providing substantial assistance to the fraud:

> 409. Mayer Brown knew of FPCM's misconduct and of Gunlicks' misconduct, and knew that their misconduct constituted breaches of fiduciary duty to the Founding Partners.
>
> 410. Mayer Brown provided substantial assistance and/or encouragement to FPCM and to Gunlicks to act in breach of their duties to Founding Partners by: (a) knowingly drafting false statements in offering memoranda and/or supplements; (b) dissuading FPCM and Gunlicks from declaring defaults or exercising remedies; and (c) advising FPCM and Gunlicks to continue conduct that Mayer Brown knew to be breaches of their fiduciary duties to Founding Partners.

2 The existing claim for aiding and abetting fraud in the Second Amended Complaint is also based upon Mayer Brown's knowledge of the fraud, and knowingly providing substantial assistance to the fraud:

> 421. Mayer Brown had actual knowledge that FPCM and Gunlicks were committing fraud as described above.
>
> 422. Mayer Brown gave substantial assistance to FPCM and Gunlicks' fraud as alleged above with respect to the substantial assistance in breaches of fiduciary duty, both by preparing offering memoranda and/or supplements that affirmatively misrepresented material facts to the limited partners and other innocent decision-makers, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

Funds, to the injury of the Funds and the investors).[3] Proposed Third Amended Complaint, Count XI. The amendments allege that Mayer Brown had actual knowledge of the fraud (which was also alleged in the original Complaint and Second Amended Complaint), and knowingly concealed the diversion and misuse of Founding Partners assets during the course of the first SEC investigation from 2002-2007. See Proposed Third Amended Complaint, paragraphs 671-673, incorporating allegations of preceding paragraphs, including 205-206, and Part XIII, paragaphs 214-233.

Mayer Brown drafted and mailed to the investors (including the Assignors) a Cover Letter which represented that the first SEC investigation had been "successfully resolved" when, in fact, Mayer Brown had only succeeded in concealing the fraud from the SEC, allowing the fraud to continue, and increasing the damages from the fraud to the Funds and to their investors, including the assignors. Proposed Third Amended Complaint, paragraphs 674-675. The material misrepresentations and omissions to the SEC and to the investors were made with the intent that they would believe and rely upon them, and the SEC and the Funds and their investors relied in exactly the manner that Mayer Brown expected and intended, and the Funds and investors were damaged as a direct and proximate result of their justifiable reliance. Proposed Third Amended Complaint, paragraphs 676-680, incorporating allegations of preceding paragraphs, including Part XX, paragraphs 399-590.

III. MAYER BROWN JOINED IN THE FOUNDING PARTNERS FRAUD

The Founding Partners fraud was generally outlined in the SEC's Complaint, ¶¶ 1-8 and 20-48 as follows:

[3] The misrepresentations and omissions to the SEC were intended to prevent the discovery of the fraud by the investors, as well as by the SEC: "It is not necessary that a direct statement be made to the representee in order to give rise to the right to rely upon the statement, for it is immaterial whether it passes through a direct or circuitous channel in reaching him, provided it be made with the intent that it shall reach him and be acted on by the injured party." *Harrell v. Branson,* 344 So. 2d 604, 606 (Fla. 1st DCA 1977).

The Commission brought the action to enjoin "two recidivists" – FPCM and Gunlicks – from violating the antifraud provisions of the federal securities laws and a December 2007 Commission cease-and-desist order against them. SEC Complaint, ¶ 1.

The reference to FPCM and Gunlicks as "recidivists" concerns a prior investigation and enforcement action by the SEC from 2002-2007, which ended without the SEC discovering the fraud alleged in the 2009 SEC Complaint. The Receiver's proposed amendment to add claims against Mayer Brown for fraud and for negligent misrepresentation concern Mayer Brown's role in that first SEC investigation, including its responsibility for the SEC's failure to discover the fraud described in the 2009 Complaint (which the SEC alleged had been continuing since at least 2004), and the failure to advise the Funds and their limited partners/investors of the truth with respect to the same facts that were concealed from the SEC during that investigation.

FPCM and Gunlicks represented to investors that their "primary fund" (Stable-Value) loaned money to the Sun Capital entities, which were "factoring short-term (collected within 150 days), highly liquid receivables, and that these receivables fully secured the loan to Sun Capital." SEC Complaint, ¶ 2. In fact, unbeknownst to investors, beginning in 2004[4] Sun Capital began "purchasing receivables that were longer-term, less liquid, and much riskier in nature," including working capital loans to troubled hospitals and workers compensation receivables that take an average of almost three years to collect. SEC Complaint, ¶ 3.

FPCM and Gunlicks "continued to solicit investors for Stable-Value without disclosing the change in the underlying investments and new risks they presented. *Sun Capital now owes $550 million on the Stable-Value loan, which constitutes 99% of Stable-Value's portfolio. Only 32% of this loan amount*, however, is invested in and secured by the less risky, short-term

[4] There are some differences between the fraud alleged in the SEC Complaint and that alleged in the existing Second Amended Complaint and in the proposed amendments. For example, the Receiver alleges that the fraud actually commenced before 2004, and that both Defendants were aware of the fraud from its inception.

receivables that [FPCM] and Gunlicks described to investors." SEC Complaint, ¶ 4 (emphasis added).

These other receivables "creat[ed] greater liquidity risks for Sun Capital and, in turn, for Stable-Value investors seeking to redeem their interests. These receivables also did not present the option for Sun Capital to return any uncollectible amounts because Sun Capital purchase them in bulk at a discount." SEC Complaint, ¶ 25. Since 2004, they also included "Disproportionate Share" or "DSH" payments, *id.* at ¶ 26, which were also "considerably riskier than standard healthcare receivables. They add significant liquidity risks due to their collection delays. More importantly, they add a 'going concern' risk that ties their collectability to the provider's ability to continue to operate successfully." *Id.* at ¶ 27.

The SEC alleged that "The *fund documents, offering materials, and financial statements* for Stable-Value *did not disclose* that Sun Capital invested in workers-compensation or DSH receivables, or these receivables' longer collection periods and materially increased collection risk." *Id.* at ¶ 34 (emphasis added).

E&Y was the auditor for the financial statements that did not disclose, and instead actively concealed and misrepresented the facts surrounding the Founding Partners fraud. Mayer Brown was counsel for FPCM and for the Founding Partners Funds, and was intimately involved in the preparation of the "fund documents" and "offering materials" referred to in the SEC Complaint – among many other documents – that not only failed to disclose, but actively concealed and misrepresented, the true facts surrounding the Founding Partners fraud. Mayer Brown was also engaged in response to the SEC's first investigation into FPCM and Gunlicks, and was instrumental in persuading the SEC to close that investigation without discovering the existence of the fraud that the SEC subsequently discovered and described in its 2009 SEC Complaint.

Both E&Y and Mayer Brown knew of the misrepresentations and omissions in the "fund documents, offering materials, and financial statements" that constitute the Founding Partners fraud. Both E&Y and Mayer Brown knowingly, actively, and substantially participated and assisted in the fraud.

A. <u>Mayer Brown Knew That The Founding Partners Investment Program Was Being Promoted Based Upon Material Misrepresentations And Omissions, And Substantially Assisted The Fraud.</u>

Mayer Brown understood from the very beginning of the Stable-Value/Sun Capital relationship the importance of the representations about the nature and quality of the healthcare receivables to be factored by Sun Capital with funds obtained from the Founding Partners Funds' investors.

On December 17, 1999, Gunlicks sent a memo to Mark Klyman of Mayer Brown anticipating a meeting "to discuss your preparation of a loan and investment security agreement between Founding Partners Multi-Strategy Fund, LP [later renamed Stable-Value] and Sun Capital Healthcare, Inc." The memorandum described the investment program and included the following points:

- The Fund will invest in and own *a pool of eligible investment grade medical receivables* from third party payors (medical insurance companies).
- *The receivables are guaranteed against debtor insolvency and bankruptcy.*
- *For any reason, a receivable that has not paid within 120 days of the (medical) service performed is replaced by a new eligible receivable of like amount* (a put option).

Memo to Marc Klyman (MB) from William Gunlicks, December 17, 1999 (emphasis added).

All of that was well understood before Mayer Brown prepared the disclosures for the June 2000 Supplement to the Stable Value Offering Memorandum, which included the representations described above that

- Eligible receivables under the Credit and Security Agreement between Stable-Value and SCHI would consist of receivables "that satisfy certain criteria, including that *fewer than one hundred twenty (120) days have passed since the date on which the applicable services were provided by the applicable seller to the applicable patient*";

- The proceeds of Stable-Value's loans to SCHI would be used to finance "'Healthcare Receivables' payable by third parties such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid"; and that
- "Pursuant to the Credit and Security Agreement, loan proceeds that have not been used by [SCHI] to acquire Healthcare Receivables are to be held in a bank account (the "Holding Account") until they are used to acquire Healthcare Receivables or to make payments to [Stable-Value]."

Mayer Brown prepared the 2000 and 2002 Credit and Security Agreements in which it identified itself as "counsel to lender" (Stable-Value).

In the 6 June 2000 Credit and Security Agreement, Mayer Brown was identified as "counsel to the Lender" (§ 5 ¶ (g)), an "Eligible Account" was defined to "mean an Account: … (b) that is not a Defaulted Account," (§1.37), and "Defaulted Accounts" were defined to mean "a Purchased Account (i) as to which (x) at least one hundred twenty (120) days have passed since the Date of Service for such Purchased Account" (§1.32). In the 2 January 2002 Credit and Security Agreement between Sun Capital and Stable-Value, Mayer Brown was described as "counsel to the Lender" (Stable-Value). After preparing the Credit and Security Agreements, Mayer Brown prepared a Supplement to the Stable-Value Offering Memorandum, including a representation to all investors that, "Except as expressly stated [in the Supplement] … the confidential memorandum remain[s] in place."

Beginning no later than May 2005, Mayer Brown drafted an amendment to the Credit and Security Agreement providing for eligibility of workers' compensation claims *up to 1,000 days old*, and continued to work on amendments to the Credit and Security Agreement.

> "The definition of Defaulted Account in Section 1.32 of the Agreement is hereby amended by inserting the following at the end thereof: 'provided that, in the case of a Purchased Account that is a

> Workers' Compensation Receivable, clause (i)(x) shall be deemed to refer to [*one thousand (1000)] days (?) rather than one hundred twenty (120) days*.'"

Letter to Howard Koslow (SC) from William Gunlicks, Mayer Brown draft 24 May 2005, ¶ 2 (GUN000018540) (emphasis added).

> Clause (c) of the definition of Eligible Account in Section 1.37 of the Agreement is hereby amended by adding the following at the end thereof: provided that, *in the case of an Account that is a Workers' Compensation Receivable, the Purchase Date is not more than [one thousand (1000)] days [?] after the applicable Date of Service*.'"

Letter to Howard Koslow (SC) from William Gunlicks, Mayer Brown draft 24 May 2005, ¶ 3 (GUN000018540) (emphasis added).

> Any underlying non-workers compensation healthcare receivables that age beyond 150 days are either replaced by new receivables or are reduced from the future funding to the healthcare providers. Due to the longer collection period for workers compensation healthcare receivable, which is a function of the administrative legal process under state workers compensation laws, *any underlying workers compensation healthcare receivables that age beyond 1,000 days* are either paid back by the Borrower, replaced by new receivables or are reduced from future funding to the healthcare providers."

Email to Judy Aller (FPCM) from James Barry (MB), cc: Michael Butowsky (MB), 10 November 2008, [RCV-MBE-016694-95] (emphasis added).

Without requiring any disclosure to the Funds or to the SEC (while the SEC investigation was continuing), Mayer Brown knew that Sun Capital was in fact purchasing such workers' compensation receivables with Stable-Value loans. December 15 2006 email from Fues to Klyman (Mayer Brown) ("Take out … reference to states other than California. *They are … funding Calif. Workers comp …*"), and email from Philip Fues (FPCM) to Howard Koslow (SC) and William Vazquez (SC/Promise), with cc to Marc Klyman (Mayer Brown), dated August 27, 2007 [CHI000017830] ("We will need *current collateral information* regarding Promise Healthcare receivables in order to complete the definition of Borrowing Base as it relates to concentration limits on *workers compensation receivables*, cost report settlement receivables, [and] *disproportionate share hospital receivables*") (emphasis added). Thus, without any disclosure to the Funds or to the SEC (while the SEC investigation was continuing), Mayer Brown was also aware that Sun Capital was purchasing DHS payments, in addition to continuing workers' compensation receivables, with Stable-Value funds.

Mayer Brown also knew of other uses of Stable-Value funds by Sun Capital that were not properly disclosed and did not conform to the representations made in the Offering Memorandum. An October 17 2007 email from Bowers to Fues refers to Mayer Brown's role in trying to "fix up and document" substantial loans already made, without any appropriate documentation, for the acquisition of hospitals owned by parties related to Sun Capital. ("I'm trying to figure out [with help from Susan Proffitt of MBR&M][5] the best way to fix up and document advances … made to build … Bossier Hospital. … About $13 million was advanced by Stable Value …. In talking with Susan [Proffit] (and Marc [Klyman]) … the cleanest way to fix this is … make a new loan … that takes out the old advance(s)") (emphasis added).

Thus, Mayer Brown had actual knowledge that the Founding Partners Funds' money was being used for purposes that were not disclosed and that exposed the Funds and their investors to significant risks and losses. It did nothing to require disclosure, and did not itself advise the SEC of these facts, although the SEC investigation was continuing throughout this period.

B. <u>Mayer Brown Joined In The Fraud And Was Instrumental In Concealing The Fraud During The First SEC Investigation Of FPCM and Gunlicks</u>

From early 2004 (at least) to 2007, Mayer Brown was engaged in response to an investigation by the SEC, which resulted in an Administrative and Consent Order in December 2007. During the entire period of that SEC investigation, Mayer Brown continued to perform legal services for the Founding Partners Funds.

[5] At the time, the firm was known as Mayer Brown Rowe & Maw.

While the first SEC investigation was continuing, Mayer Brown knew exactly what was being represented to the limited partners/investors and others about the use of the funds' assets. In particular, Mayer Brown knew that the Offering Memorandum for Stable-Value included specific and material representations about the quality and safety of the short-term receivables that served as collateral for the loans. Mayer Brown knew that those representations were not true. Mayer Brown also knew that the SEC investigation inquired very broadly into what was happening with the Founding Partners Funds and investors' money, and that the SEC was specifically asking about potential misrepresentations about the uses of the funds and about the disclosures to the investors.

Mayer Brown knew that all of the financial statements provided to the SEC during the investigation consistently included the representation that "any underlying healthcare receivable that aged beyond 120 days are either replaced by future receivables or are reduced from the future funding to the healthcare providers." All of the audited financial statements from 2003 to 2006 included that representation.

In early 2002, the SEC examined the books and records of FPCM pursuant to § 2004 of the Investment Advisors Act of 1940 and identified an issue relating to related-party transactions. The SEC raised questions not only about the possible misuse of proceeds by prohibited loans and investments in affiliates, but the lack of disclosure of the related-party transactions in the Stable-Value Offering Memorandum.

The SEC wrote to Gunlicks about "a non-public inquiry into the above-referenced matter" of FPCM and requested an extensive collection of documents going well beyond the issue of the related-party transactions identified at the start of the year. On 12 August 2002, the SEC followed up with a questionnaire to Gunlicks and FPCM again expressing interest in a wide range of subjects relating to the Funds' loans to Sun Capital, and the quality and safety of those loans and the Funds' investments. On 16 December 2003, the SEC wrote to Gunlicks and advised him that the staff of the SEC intended to recommend that the Commission take legal action against them alleging that they violated certain provisions of federal law. The SEC's listed concerns in violations included

> [m]isappropriation of investor funds by breaching your fiduciary duties and defrauding actual and prospective clients and the investors of [all three then existing funds] through a series of misrepresentations and omissions in the Funds' offering materials regarding the use of investor funds through Stable-Value's healthcare and commercial receivable investment programs.

12 June 2002 SEC questionnaire to Gunlicks.

In a 19 January 2004 letter to the SEC, Mayer Brown attorney Thomas Mueller represented that Mr. Gunlicks "*has never had even a momentary lapse of business judgment*, and, as evidenced in the transactions at issue, as well as in his general course of conduct in business, *Gunlicks always brought questions of business conduct to his counsel for advice and guidance*. He is not prone to reckless conduct or willful blindness, and, we submit, has engaged in neither of these." Shortly thereafter, Mayer Brown submitted a "Well Submission" to the SEC staff on 12 April 2004, minimizing the seriousness of the non-disclosure of the related-party transactions and denying the existence of any harm to the investors.

That first SEC investigation lasted through December 2007. However, at no time during that investigation did Mayer Brown disclose to the SEC that the Funds' assets were being misdirected from eligible investment grade healthcare receivables or that the worker's compensation/DSH/unsecured loan fraud was occurring and growing larger from month-to-month.

In fact, during the last few months of the first SEC investigation, Mayer Brown made a concerted effort to block the appointment of a "compliance monitor" by the SEC, who would have been charged with reviewing FPCM's and Gunlicks' practices and controls, the disclosures and representations to limited partners/investors and the actual contents of the Sun Capital loan portfolio. Accordingly, the December 2007 SEC audit did not include the provision requiring a compliance monitor, and the fraud continued to grow even larger in 2008 and 2009, before the

SEC discovered the massive fraud that was successfully concealed during the first investigation, and returned to file a complaint in April 2009 that lead to the appointment of the Receiver.

In the 2009 Complaint for Injunctive and Other Relief, the SEC alleged violations of the anti-fraud provisions of the federal securities laws and sought the appointment of a Receiver to protect and preserve the remaining assets of the Receivership entities. The SEC Complaint alleged that the fraud had been continuing since [at least] 2004:

> The Defendants, **beginning in 2004**, permitted Sun Capital to start purchasing receivables that were longer-term, less liquid and much riskier in nature. Among other things, Sun Capital purchased these new receivables from often troubled hospitals that needed to remain operating in order to collect the receivables. Founding Partners and Gunlicks also permitted Sun Capital to use investor proceeds to make working capital loans to these hospitals so they would remain afloat. In addition the Defendants allowed Sun Capital to invest in worker's compensation receivables that take an average of almost three (3) years to collect.

The new claims against Mayer Brown arise from its conduct with respect to the first SEC investigation, and its representation to the Funds and investors, including the assignors, that the SEC investigation had been "successfully resolved" when – as subsequent events revealed – Mayer Brown had "succeeded" only in delaying the SEC's discovery of the on-going fraud, which allowed the fraud to continue, and the Funds' and assignors' damages to increase.

IV. CONCLUSION

For all of the above reasons Plaintiff requests that this Court permit the Receiver to amend his pleadings, and to file and serve the attached Third Amended Complaint.

Respectfully submitted this 5th day of January 2015.

By *__/s Scot C. Stirling__*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail to Jeffry D. Colman, Esq., David Jimenez-Ekman, Esq., Anna W. Margainska, Esq., April A. Otterberg, Esq., **Jenner & Block, LLP**, 353 North Clark Street Chicago, IL 60654 (jcolman@jenner.com; djimenez-ekman@jenner.com; amargasinska@jenner.com, aotterberg@jenner.com); William C. O'Neil, Esq., Derek J. Sarafa, Esq., Linda T. Coberly, Esq., **WINSTON & STRAWN, LLP,** 35 West Wacker Drive, Chicago, IL 60601 (woneil@winston.com; dsarafa@winston.com; lcoberly@winston.com); Eugene K. Pettis, Esq., **Haliczer, Pettis & Schwamm, P.A.**, 100 S. E. Third Avenue, 7th Floor, Fort Lauderdale, FL 33394 (EPettis@hpslegal.com); and served via regular mail to **GREENBERG TRAURIG, P.A.**, 333 S. E. 2nd Avenue, Miami, FL 33131, on this 6th day of January, 2015.

By *___/s Scot C. Stirling___________*
Scot C. Stirling

EXHIBIT A

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

DANIEL S. NEWMAN, as RECEIVER for FOUNDING PARTNERS STABLE-VALUE FUND, LP; FOUNDING PARTNERS STABLE-VALUE FUND II, LP; FOUNDING PARTNERS GLOBAL FUND, LTD.; and FOUNDING PARTNERS HYBRID-VALUE FUND, L.P., Plaintiff, vs. ERNST & YOUNG, LLP, a Delaware Limited Liability Partnership; and MAYER BROWN LLP, an Illinois Limited Liability Partnership, Defendants.	**Case No. 10-49061**

THIRD AMENDED COMPLAINT

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COMPLAINT

Plaintiff DANIEL S. NEWMAN solely in his capacity as court-appointed Receiver for Founding Partners Stable-Value Fund, LP ("Stable-Value"); Founding Partners Stable-Value Fund II, LP ("Stable-Value II"); Founding Partners Global Fund, Ltd. ("Global Fund"); and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value Fund") (collectively, "Founding Partners"), for his Complaint against Defendants Ernst & Young, LLP ("E&Y") and Mayer Brown LLP ("Mayer Brown") alleges as follows:

I. PRELIMINARY STATEMENT.

1. Plaintiff brings this action against E&Y and Mayer Brown to recover damages for the over $550 million that was lost by the four funds constituting Founding Partners as a direct and proximate result of Defendants' misconduct as alleged herein. Plaintiff is also the assignee of claims assigned by (1) Harrison Family Investments LP; (2) Clanton Harrison IRA; (3) Leslie T. Merrick Investment Trust; (4) Chris Dance; (5) Kenny Allan Troutt Descendants Trust; (6) Double S Partners; (7) John Miller; (8) Vassar Point LLC; (9) Telesis IIR, L.P.; (10) Glen Gibson; (11) Ron Mann, IRA; (12) Walter E. Johnson; (13) TJNJH Investment Partnership; (14) Kathleen A. Olberts Living Trust; (15) Annandale Partners, LP; (16) Annandale Partners II, LP; (17) J. Christopher Dance IRA; (18) R. Michael Bales; (19) Clear Fir Partners, LP; (20) John E Cunningham IV; (21) Carolyn A Cunningham; (22) Sayden Ranch, LP; (23) Cunningham Children's Trust; (24) Gary Sledge; (25) Stiles A. Kellett, Jr.; (26) Kellett Family Partners, LP; (27) Chariot Stable Asset Fund, LP; (28) MJA Innovative Income Fund, LP; (29) Maxwell Halstead Partners LLC; (30) Haines All Seasons Select Fund, LLC; (31) Haines All

Seasons Select Fund II, LLC; (32) Dakota Partners LLP; (33) PP Partnership LP; (34) Rodger Sanders; (35) Stuart Frankenthal; (36) J. Mark Lozier Revocable Trust; (37) Four J Partnership LP; and (38) Paul Loeb.

2. Through Stable-Value and later Stable-Value II, the Founding Partners' funds loaned hundreds of millions of dollars to two factoring companies who, according to Stable-Value's E&Y-audited financial statements, used the loan proceeds to purchase short-term (120-day), high-quality (primarily healthcare) receivables payable by the government or by insurance companies. Those receivables would then purportedly serve as collateral fully securing the Founding Partners' loans, and provide a stable, reliable source of income from which the factoring companies could make scheduled interest payments to Founding Partners.

3. The business of Stable-Value and Stable-Value II consisted almost exclusively of making loans of investors' money to these two factoring companies.

4. Unbeknownst to the limited partners and other innocent decision-makers of Founding Partners, the factoring companies used hundreds of millions of dollars of the loan proceeds to purchase receivables that were much riskier and for longer terms than those disclosed in the financial statements and to make unsecured loans or "advances" to entities related to the factoring companies.

5. E&Y knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not require any disclosure of these facts in either Stable-Value's or any of the other Founding Partners funds' financial statements. E&Y instead issued unqualified or "clean" audit opinions on those financial statements.

6. Mayer Brown also knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not disclose or require any disclosure of these facts to the limited partners and other innocent decision-makers of Founding Partners, and instead prepared disclosure documents that concealed the improper uses of Stable-Value loan proceeds and misrepresented the actual use of Stable-Value loan proceeds to the limited partners and other innocent decision-makers of Founding Partners.

7. The factoring companies' misuse of Stable-Value loan proceeds rendered the factoring companies incapable of repaying the loans resulting in substantial losses.

8. Stable-Value, Stable-Value II, and Hybrid-Value Fund are limited partnerships. Investors in each of those funds became limited partners pursuant to an agreement of limited partnership pertaining to each fund.

9. Global Fund is a Cayman Islands hedge fund with approximately 84% of its customers' assets invested in Stable-Value and Stable-Value II. A substantial portion of Hybrid-Value Fund assets were likewise invested in Stable-Value and Stable-Value II.

10. Founding Partners Capital Management Co. ("FPCM") is the general partner for Stable-Value, Stable-Value II, and Hybrid-Value Fund, and the investment manager for Global Fund.

11. Each of the Founding Partners' funds issued annual financial statements that were provided to the limited partners in the funds.

12. Founding Partners engaged E&Y to audit those financial statements for each of the years 2000 through 2007, and paid E&Y hundreds of thousands of dollars in

fees for its audits. Global Fund was audited by E&Y's affiliated firm, E&Y Bermuda, although the audit opinions (all unqualified or "clean") on Global Fund's financial statements were issued by the affiliated firm, E&Y Cayman Islands.

13. Founding Partners engaged Mayer Brown to represent Founding Partners, including without limitation with respect to the preparation and amendment of documents relating to transactions with the factoring companies, and the preparation of disclosure documents directed to the limited partners in the Founding Partners funds.

14. As described in detail herein, E&Y and Mayer Brown owed to Founding Partners and their limited partners numerous professional, fiduciary, contractual, and other duties.

15. The limited partners of Stable-Value and Stable-Value II were wholly innocent and unaware of the misconduct alleged herein.

16. In connection with its audits of the financial statements of Stable-Value, E&Y also audited the factoring companies who were the recipients of Stable-Value's loans of investor funds from 2002 through 2004. In connection with its 2005 and 2006 audits of Stable-Value, E&Y performed Agreed-Upon Procedures ("AUPs") on the factoring companies' portfolio of receivables serving as collateral for the Stable-Value loans. These audits and Agreed-Upon Procedures were performed by separate engagements with Founding Partners and the factoring companies.

17. E&Y knew at the times it performed its audit/Agreed-Upon Procedures work at the factoring companies, that FPCM and Founding Partners lacked the expertise and capability to value the receivables serving as collateral for the loans. The limited

partners and other innocent decision-makers of FPCM and Founding Partners relied upon and reposed trust and confidence in E&Y to perform procedures on the collateral portfolio sufficient to confirm the adequacy of the collateral and to advise Founding Partners of any inadequacy. E&Y thus owed fiduciary duties to Founding Partners and to their limited partners, including the duties of due care, loyalty, and full disclosure of all material facts.

18. As a result of its audits/Agreed-Upon Procedures at the factoring companies, E&Y knew that beginning in approximately 2003 the factoring companies began to misuse Founding Partners' loan proceeds by, among other things, purchasing receivables that were longer-term, less liquid, and much riskier in nature than what was represented to limited partners and investors in the financial statements. For example, the factoring companies began to use tens of millions of dollars of Stable-Value funds' money annually to purchase un-adjudicated workers compensation claims and other speculative forms of income which were not collectible (if they were collectible at all) for many years. In addition, the factoring companies began to misuse and misappropriate Stable-Value funds' money by making tens of millions of dollars of unsecured personal and related-party gifts or "advances" of cash, instead of purchasing receivables.

19. E&Y's own workpapers establish that E&Y had actual knowledge of the factoring companies' use of hundreds of millions of dollars of Stable-Value fund assets to purchase workers compensation and other receivables that were of substantially less liquidity, collectability and value than the quality short-term healthcare receivables represented in the financial statements. E&Y also knew about the factoring companies'

use of tens of millions of dollars of Stable-Value fund assets to make unsecured gifts or "advances" to hospitals affiliated with the factoring companies. E&Y also knew that none of these facts were disclosed in Founding Partners' financial statements.

20. Nonetheless, for each of the years 2000 through 2006, E&Y issued unqualified audit opinions in which it represented that: (a) it was independent; (b) it had conducted audits of Stable-Value's financial statements in accordance with applicable professional standards, specifically generally accepted audit standards ("GAAS"); (c) it had a reasonable basis for its opinions; and (d) Stable-Value's financial statements presented fairly in accordance with generally accepted accounting principles ("GAAP"), Stable-Value's financial position, results of operations changes in partners' capital and cash flows. As discussed in detail herein, E&Y knew that each of these representations was false when made.

21. E&Y addressed each of these audit opinions to "The Partners" of Stable-Value, and knew that Stable-Value's general partner, FPCM, would provide the financial statements and E&Y's accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

22. Mayer Brown also knew that Stable-Value's general partner, FPCM, would provide the financial statements and E&Y's accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

23. E&Y knew that the limited partners and other innocent decision-makers of FPCM and Founding Partners would rely upon E&Y's audit opinions in refraining from taking action to protect Founding Partners assets loaned to the factoring companies.

24. E&Y resigned as Founding Partners' auditor immediately after the 2006 audit due, according to internal E&Y documents, to the unacceptably high risk associated with the audits without disclosing their real reasons to Founding Partners. Thereafter, at least one E&Y partner lobbied for and secured E&Y's reengagement to audit Founding Partners' fiscal year 2007 financial statements in the hope of securing additional business from entities related to and/or affiliated with the factoring companies who were funded by Founding Partners.

25. E&Y knew that the 2007 financial statements were grossly and materially misstated and misleading, containing misrepresentations similar to those in the 2006 financial statements. But E&Y refused to issue an adverse audit opinion, or otherwise reveal the truth, instead dragging the audit out for over one year until shortly before Founding Partners was placed in the current receivership.

26. In connection with the 2007 audit, E&Y also knew that FPCM was using a January 2007 Confidential Offering Memorandum, containing misrepresentations similar to those in the 2006 audited financial statements that Stable-Value investor funds were used to purchase high-quality, short-term healthcare receivables, and identifying E&Y as Founding Partners' auditor.

27. The January 2007 Confidential Offering Memorandum was prepared by Mayer Brown.

28. Had E&Y refused to issue an unqualified audit opinion on Stable-Value's 2006 financial statements and otherwise revealed the truth about the factoring companies' use of Founding Partners' assets as E&Y was required to do, the limited partners and innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

29. Had Mayer Brown revealed the truth about the factoring companies' use of Founding Partners' assets as Mayer Brown was required to do, the limited partners and innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

30. As the result of Defendants' misrepresentations and concealment of the truth, all or a substantial amount of the over $550 million dollars which Founding Partners loaned to the factoring companies to purchase receivables and which constituted 95% of Stable-Value's portfolio, has now been lost. The factoring companies are in default and have ceased making interest payments on the loans. Moreover, only a small percentage of the outstanding loan balance is invested in and purportedly secured by the less risky, short-term, high-quality receivables that FPCM and Defendants described to limited partners and other innocent decision-makers.

II. <u>THE 2009 SEC COMPLAINT AND RECEIVERSHIP.</u>

31. On April 20, 2009, the Securities and Exchange Commission ("SEC") filed a five-count securities fraud complaint naming FPCM and its principal, William L. Gunlicks ("Gunlicks"), as defendants. See *Securities and Exchange Commission v.*

Founding Partners Capital Management Co. and William L. Gunlicks, et al., Case No. 2:09-CV-00290JES-SPC (M.D. Fla.).

32. In its Complaint, the SEC alleged that FPCM violated the anti-fraud provisions of the federal securities laws, including Sections 17(a)(1)-(a)(3) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934, Sections 206(1), (2) and (4) of the Advisers Act of 1940, and violated the SEC's December 3, 2007 Cease and Desist Order against FPCM.

33. In its Complaint, the SEC specifically alleged that FPCM and Gunlicks misrepresented through, among other things, "offering materials" and "audited financials" that investment in Stable-Value "was an investment in loans to Sun Capital that were fully secured by healthcare receivables" and that "Sun Capital would collect these receivables in less than 150 days or have them replaced with new receivables or covered by other funding." These offering materials and financial statements concealed the factoring companies' purchases of receivables that were longer term and substantially riskier than what was represented to limited partners and other innocent decision-makers of Founding Partners.

34. In addition the SEC in its Complaint alleged that FPCM and Gunlicks were in violation of a 3 December 2007 Cease and Desist Order in which the SEC found that FPCM had "caused Stable-Value to pay an undisclosed fee to a related entity, and caused several of its funds to engage in transactions inconsistent with their offering memoranda." In its complaint, the SEC alleged that FPCM failed to disclose the Cease and Desist Order as required by its terms.

35. On April 20, 2009, Judge John E. Steele of the United States District Court for the Middle District of Florida entered an order appointing a receiver (the "Initial Receiver") for Founding Partners and FPCM. The Initial Receiver was subsequently replaced by Daniel S. Newman, Esq. on May 20, 2009.

36. The Receiver was ordered to, among other things, "take immediate possession of all property, assets and estates of every kind of [the Receivership Entities] … and institute such actions and legal proceedings … as the Receiver deems necessary." The Receiver may institute legal proceedings to recover funds for Founding Partners, which when recovered will be distributed to investors.

III. JURISDICTION AND VENUE.

37. This Court has jurisdiction over this matter and over the Defendants.

38. E&Y is subject to personal jurisdiction pursuant to Florida's long-arm Statute, 48.193. E&Y is subject to general and specific jurisdiction in Florida because it operates a business in Florida, it maintains offices throughout Florida, it performs services in Florida and it offers services to the public through Florida-licensed accountants. In addition, E&Y committed torts in Florida.

39. Mayer Brown is subject to personal jurisdiction in Florida pursuant to Florida's long-arm statute, 48.193, Fla. Stat., because it purposefully availed itself of jurisdiction in Florida. Mayer Brown committed torts in Florida, performed services for Founding Partners in Florida, its professionals visited the offices of Founding Partners in Florida, it rendered bills to Founding Partners in Florida, it negotiated on Founding

Partners' behalf in Florida, and Mayer Brown employed attorneys licensed to practice law in Florida.

40. Venue is proper in this Judicial Circuit and Broward County because E&Y maintains offices in Broward County where events giving rise to the action occurred and the causes of action accrued, and because one or more E&Y's partners, including the partners for the Founding Partners engagement, are residents of Broward County.

41. Founding Partners' claims herein are governed by Florida law, because Florida has the most significant relationship with Founding Partners' claims asserted herein. Founding Partners was based in Florida, E&Y maintains offices in Florida, and many of the services at issue were performed by E&Y and Mayer Brown in Florida.

IV. PARTIES.

42. Daniel S. Newman is the court-appointed receiver for Founding Partners.

43. E&Y is a Delaware Limited Liability Partnership with offices throughout the United States. E&Y is one of the so-called "Big Four" accounting firms.

44. E&Y was engaged to serve as outside auditor of Founding Partners, and audited Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

45. E&Y issued unqualified or "clean" audit opinions on Founding Partners' annual financial statements for each of the fiscal years ending December 31, 2000 through 2006.

46. E&Y did not complete its audit of Founding Partners' fiscal year 2007 financial statements.

47. Defendant Mayer Brown LLP is an Illinois Limited Liability Partnership with its principal place of business in Chicago, Illinois. Mayer Brown was formerly known as Mayer Brown Rowe and Maw LLP. Mayer Brown is a global law firm, employing over 1500 lawyers, and promotes its "*global reach*" and its "local market knowledge and deep understanding of industry-specific issues to ensure we provide the best solution for the client *anywhere in the world*" on its internet website at http://www.mayerbrown.com (emphasis added).

48. All conditions precedent necessary to bringing this action and the claims herein have occurred, have been excused or have been waived.

V. THE FOUNDING PARTNERS FUNDS.

49. Stable-Value is a Delaware limited partnership with its principal place of business in Naples, Florida. Stable-Value was formerly known as Founding Partners Multi-Strategy Fund LP. FPCM is the general partner of Stable-Value. As noted, Stable-Value lent funds to Sun Capital and Sun Capital Healthcare (collectively "Sun Capital") for the purchase of high quality, short-term commercial and healthcare receivables fully securing the loans and generating stable high returns.

50. Stable-Value II is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is the general partner of Stable-Value II. Stable-Value II was created in or around 2007 after Stable-Value approached the maximum number of permissible investors. Stable-Value II's portfolio was entirely invested in Stable-Value as of December 2008.

51. Global Fund is a Cayman company registered as a mutual fund in the Cayman Islands. FPCM is Global Fund's investment manager. Global Fund invested the vast majority of its assets in Stable-Value. As of December 2008, approximately 84% of Global Fund's portfolio was invested in Stable-Value.

52. Hybrid-Value Fund f/k/a Founding Partners Equity Fund, LP, is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is Hybrid-Value Fund's general partner. Hybrid-Value Fund's investment strategy consisted of investing its assets in diversified equities and fixed income structured financial portfolio programs, although a substantial and material portion of Hybrid-Value Fund's portfolio was at all relevant times invested in Stable-Value.

VI. INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS.

53. There were at all relevant times one or more innocent limited partners of Founding Partners and other innocent decision-makers within FPCM and Founding Partners who could and would have taken action to protect Founding Partners and the funds invested in Founding Partners had they known the truth about Sun Capital's improper use of those funds. Those actions would have included, but not been limited to:

(a) consulting an attorney and following the attorney's advice;

(b) reporting to state and federal authorities, including the SEC (which was investigating Founding Partners from 2002 through the end of 2007), the use of Founding Partners' investor funds in contravention of what had been represented to investors so that the SEC could have taken appropriate action to protect the funds before Sun Capital was rendered incapable of repaying its debt to Founding Partners as the debt became due or at all;

(c) taking timely action to recover Founding Partners' funds loaned to Sun Capital at a time when Sun Capital was not insolvent and/or when Sun Capital was capable of returning to Founding Partners the loaned amounts or collateral of at least equivalent value;

(d) bringing timely action against Sun Capital to enjoin its use of Founding Partners' loan proceeds in ways contrary to its agreements with Founding Partners and contrary to what had been represented to Founding Partners' limited partners and innocent decision-makers, and to recover damages incurred at a time when Sun Capital would have been capable of paying such damages;

(e) bringing timely legal actions against FPCM and Gunlicks to enjoin their fraud and breaches of fiduciary duty to Founding Partners and their limited partners as described herein; and

(f) removing or causing the removal of Gunlicks and FPCM as general partner, and the removal of any other person responsible for the use of Founding Partners' funds in any manner inconsistent with the representations in Founding Partners' financial statements, offering memoranda and elsewhere as alleged in this Complaint.

54. At all relevant times the innocent decision-makers of FPCM and Founding Partners were unaware that Sun Capital was using Founding Partners' loan proceeds as alleged herein to:

(a) purchase workers' compensation receivables and disproportionate share receivables ("DSH");

(b) purchase and/or hold receivables aged beyond 120 days; and/or

(c) make unsecured loans and gifts to related parties.

55. At no time during the material time period was Founding Partners, nor any of the Founding Partners Funds, a "Ponzi scheme," "engine of theft," or "engine of fraud" organized for the purpose of engaging in criminal activity or committing fraud.

VII. OTHER NON-PARTIES.

A. FPCM and Gunlicks.

56. FPCM is a Florida corporation with its principal place of business in Naples, Florida. FPCM is registered with the SEC as an investment adviser. In December 2007, FPCM consented to the entry of a SEC order censuring it and ordering it to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act. *In the Matter of Founding Partners Capital Management Co. and William Gunlicks*, Administrative Proceeding File No. 3-12896.

57. FPCM began operations in or around 1996.

58. FPCM was established as a private hedge fund that by 2000 primarily acted as a lender of monies to a group of affiliated entities, which purchased or factored receivables.

59. During the material time period, FPCM employed certain individuals who assisted in the management of FPCM. These individuals include at least the following: Judy Aller, FPCM's controller; Phillip Fues, FPCM's chief credit officer; and Leonard Llewellyn, managing director.

60. FPCM owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

61. Gunlicks was the president and CEO of FPCM, and as such is the primary beneficiary of FPCM's management fees. In the SEC administrative proceeding, Gunlicks consented to the entry of an SEC order requiring him to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act of 1933.

62. Gunlicks was the person primarily responsible for the creation and management of FPCM. E&Y provided tax services to him and his family for nearly 25 years.

63. Gunlicks personally managed the Founding Partners' funds and the investment of those funds in Sun Capital. Gunlicks also personally managed Founding Partners' relationship with Sun Capital and negotiated with Sun Capital.

64. Gunlicks owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

65. The misconduct of FPCM and Gunlicks alleged herein, including but not limited to, the preparation and dissemination of false and fraudulent financial statements

and offering memoranda, was completely and totally adverse to the interests of Founding Partners, and Founding Partners in no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein only resulted in the depletion and loss of Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

B. Sun Capital.

66. Sun Capital, Inc. ("SCI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCI purported to be in the business of providing accounts receivable funding for commercial companies. The financing was funded with loans from Stable-Value.

67. Sun Capital Healthcare, Inc. ("SCHI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCHI purported to be in the business of providing accounts receivable financing to healthcare providers. The financing was funded with loans from Stable-Value.

68. SCHI and SCI are based in Boca Raton, Florida. Their principals are Howard Koslow, Lawrence Leder and Peter Baronoff. Two other related entities, Promise Healthcare, Inc. and Success Healthcare, LLC were essentially owned and controlled by the same owners of SCHI and SCI.

69. Collectively, SCHI and SCI are referred to herein as the "Sun Capital" entities.

70. In its working papers, E&Y described Sun Capital as "a specialty finance company that performs factoring almost exclusively in the healthcare area (with a small amount of commercial receivables as well)."

VIII. FOUNDING PARTNERS' INVESTMENT STRATEGY – LOANS TO SUN CAPITAL SECURED BY FACTORED RECEIVABLES.

71. Stable-Value and Stable-Value II purportedly applied an investment strategy designed to yield stable above-average returns through lending facilities used to purchase accounts receivable primarily in the healthcare sector.

72. Since 2001, Stable-Value used money invested in the funds by individual and institutional investors and family trusts to make loans to Sun Capital to finance Sun Capital's discounted purchase of receivables. These loans are the primary focus of Stable-Value's investment program and represent approximately 95% of its portfolio. Founding Partners' three other funds, Stable-Value II, Global Fund, and Hybrid-Value Fund, were invested in part or in whole in Stable-Value.

73. Pursuant to the written loan agreements between Stable-Value and Sun Capital, Sun Capital could use the loan proceeds to purchase healthcare and commercial receivables, although it has focused primarily on purchasing healthcare receivables. Under the agreements, Sun Capital could draw on the loans to purchase the receivables which would generate income to pay interest on the loans on a monthly basis and which would provide security and funds to repay the principal. Sun Capital charged its factoring clients a fee of approximately 3% per month until it collected the receivables and paid Stable-Value interest of approximately 1.3% per month.

74. FPCM charged Stable-Value a 1.75% annualized management fee on the total assets of the fund. Stable-Value investors did not receive any automatic distributions from the fund. According to fund documents, however, redemptions of

investments were available on a quarterly basis requested in writing with at least sixty days notice.

75. In or around June 2000, Stable-Value began lending to SCHI and later to its affiliate, SCI. Stable-Value's loans were made pursuant to detailed Credit and Security Agreements with SCHI and later SCI. During its audits, E&Y reviewed or should have reviewed these and other material agreements. Under the SCHI Agreement, SCHI was required to borrow only from Stable-Value, and it was permitted to use the funds only for approved uses, primarily for factoring healthcare accounts receivable. The SCHI Agreement established a "borrowing base," consisting of a cushion of collateral determined by a specified formula to assure loans were sufficiently collateralized.

76. As it was originally intended, Stable-Value loaned monies to SCHI to facilitate SCHI's purchase of healthcare accounts receivable, and SCI purchased commercial accounts receivable with monies received from Stable-Value.

77. Neither Stable-Value nor any of the other Founding Partners' funds received any fees or other remuneration from investment in any of the Founding Partners' funds or from loans to Sun Capital. Rather, all administrative or managerial fees were paid to FPCM, and any income generated from loans to Sun Capital was held or re-loaned to Sun Capital solely for the benefit of Founding Partners' investors.

78. As represented in the E&Y-audited Founding Partners' financial statements, and in disclosure documents prepared, reviewed, or amended by Mayer Brown, at all relevant times, the vast majority of the funds Founding Partners loaned to

Sun Capital were loaned to SCHI, purportedly for the purchase of high-quality short-term healthcare receivables, which were to fully secure the loans and generate stable yields.

79. Factoring involves the purchase of accounts receivable – monies owed to a company – at a discount in exchange for the right to be paid the full debt owed on the accounts receivable. Both the offering memorandum for Stable-Value and supplements to the offering memorandum for Stable-Value use the following illustration of the factoring process:

Determination of net amount to be funded to Seller Gross Amount of Claim (Invoice)	$100,000
Adjustment for anticipated disallowances Based upon field audit @ 20%	($20,000)
Net Collectible Amount (NCA) as determined Pursuant to Purchase and Sale Agreement	$80,000
Advance percentage	80%
Gross amount to be funded to Seller	$64,000
Less 30 day discount fee deducted (3% of NCA)	($2,400)
Net amount to be funded to Seller	$61,600
Request for Loan Advance	
Sun Capital Healthcare, Inc. (SCH) submits request to Founding Partners Multi-Strategy Fund, L.P. (Partnership) for loan advance	
Founding Partners transfers funds to SCH	**$61,600**
SCH purchases receivables and funds Seller	**($61,600)**
Collection of Receivables	
Invoice pays on the 90th day after purchase and remittance is sent to bank lockbox	
Lock-Box Bank transfers funds from lockbox to SCH	$80,000
Payments from Collection of Receivables	

SCH pays down loan	**($61,600)**
Payment to SCH of additional discount fee ($80,000 @ 6%)	**($4,800)**
Reserve balance either held until other invoices are paid or transferred to Seller	**($13,600)**
Balance for this Flow of Funding Illustration	**$0**

80. Pursuant to the SCHI Agreement and as more fully explained therein, SCHI was only permitted to purchase eligible receivables of certain quality and character. Under the SCHI Agreement, SCHI was required to replace any receivables that had not been collected within a specified time period with fresh receivables to maintain the borrowing base. It is widely understood that generally accounts receivables become more difficult to collect as they age.

81. Mayer Brown drafted the SCHI Agreement for Stable-Value.

82. Stable-Value entered into a similar Credit and Security Agreement dated January 24, 2002 with SCI (the "SCI Agreement") which provided that Stable-Value would lend monies to SCI for the purchase of eligible commercial accounts receivable. Among other characteristics, SCI could not factor accounts receivable that could not be insured, such as a law firm's receivables. Mayer Brown drafted the SCI Agreement for Stable-Value.

83. In exchange for the loans, SCHI and SCI were required to pay Stable-Value interest on a monthly basis. The principal would be due at the end of specified terms, unless accelerated.

84. Pursuant to the SCHI and SCI Agreements drafted by Mayer Brown, Stable-Value was supposed to receive a fully-perfected, first-priority security interest in the accounts receivable being purchased by the Sun Capital entities.

85. The SCHI and SCI Agreements prohibited the respective Sun Capital entities from using the loans Stable-Value extended unless they were purchasing eligible receivables, repaying the loans or using the monies for certain other approved uses.

86. Mayer Brown and E&Y knew that the cornerstone of the relationship between Founding Partners and the Sun Capital entities was the safety and collectability of the factored accounts receivable.

87. Mayer Brown knew or should have known that purchases of worker compensation and/or DSH accounts receivable constituted a material breach of the SCHI Agreement and that any modifications to the SCHI Agreement to permit the purchase of these accounts receivable had to be in writing.

88. Mayer Brown and E&Y knew that SCHI was factoring non-compliant accounts receivable and ineligible accounts receivable, and specifically that SCHI was factoring highly risky workers compensation and DSH receivables.

89. Mayer Brown knew that Stable-Value had not modified the SCHI Agreement in writing to permit the factoring of workers compensation and DSH accounts receivable. Mayer Brown failed to advise the limited partners and innocent decision makers concerning SCHI's non-compliant purchases of highly risky workers compensation and DSH accounts receivable in investment solicitation documents.

90. Upon information and belief, Mayer Brown knew that SCHI and SCI were in breach of the SCHI and SCI Agreements, and was aware of SCI and SCHI's deviation from the terms of the SCI and SCHI Agreements, but it did not advise the limited partners and innocent decision makers that SCI and SCHI were deviating from the terms of the Agreements. Mayer Brown also failed to advise the limited partners and innocent decision makers concerning the legal consequences of such breaches and deviations for Founding Partners, or concerning waiver of default.

91. Upon information and belief, Mayer Brown drafted certain amendments to the SCI and SCHI Agreements that extended the maturity date for repayment of principal and increases in the total amount borrowed, knowing that these amendments caused Founding Partners' exposure to default by SCI and SCHI to increase. Mayer Brown failed to advise the limited partners and innocent decision makers concerning the legal consequences and risks to Founding Partners of those amendments.

92. SCHI began to experience significant defaults in payment of the accounts receivable it factored, a fact known to Mayer Brown.

93. SCHI purchased highly risky accounts receivable from troubled hospitals that desperately needed funds to remain in operation. Mayer Brown knew that SCHI was factoring for troubled hospitals, but it failed to advise the limited partners and innocent decision makers of those transactions.

IX. **WITH E&Y'S AND MAYER BROWN'S KNOWLEDGE AND ASSISTANCE, FPCM AND GUNLICKS TOUTED THE SAFETY OF THE SUN CAPITAL LOANS.**

94. The cornerstone of FPCM's presentation of the Stable-Value investment opportunity was the safety and lack of risk of the loans to Sun Capital, which provided steady and stable returns. Stable-Value's E&Y-audited financial statements, which were provided to limited partners and other innocent decision-makers, likewise represented the relative safety of the loans due to the criteria applicable to factored receivables serving as collateral for the loans. For example, the 2005 financial statements, audited by E&Y, represented that Stable-Value's purpose was to achieve stable and above-average returns, while preserving capital, through an investment strategy that "utilizes a healthcare and commercial receivable investment product." The 2005 financial statements further represented that receivables factored by SCHI, which represented the vast majority of Stable-Value's loans, were healthcare receivables payable by insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid, and that healthcare receivables "that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers."

95. Stable-Value's offering materials stated the loans were secured by healthcare receivables that "are the payment obligations of Federal and State government agencies, and certain U.S. insurance companies rated by various rating firms."

96. E&Y and Mayer Brown knew that FPCM and Gunlicks also represented to limited partners and other innocent decision-makers that the loans were collateralized according to strict criteria such that the underlying receivables would only be "investment

grade." Moreover, Gunlicks explained to limited partners and other innocent decision-makers that the loan agreements provided that all of Sun Capital's assets, including the receivables, collateralized the loan balance and any accrued interest.

97. For example, in Stable-Value's "Confidential Supplement to Confidential Memorandum dated June 2000" (the "June 2000 Memorandum"), FPCM and Gunlicks represented that Stable-Value's "investment objective is to achieve above-average rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Partnership's investment program is designed to accomplish this objective through the implementation of a Stable-Value investment strategy that has no correlation to the equity and bond markets."

98. The June 2000 Memorandum further represented that:

> Pursuant to the Credit and Security Agreements [between Stable-Value and SCHI, SCHI] agrees to use the Proceeds of the loans to finance [SCHI's] purchase of receivables arising out of the delivery of medical, surgical, diagnostic or other healthcare related goods or services (such receivables being referred to collectively as "Healthcare Receivables" payable by third parties (the "Third Party Payors") such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid. Pursuant to the Credit and Security Agreement, loan proceeds that have not been used by [SCHI] to acquire Healthcare Receivables are to be held in a bank account (the "Holding Account") until they are used to acquire Healthcare Receivables or to make payments to [Stable-Value].

The June 2000 Memorandum also represented that eligible receivables under the agreement between Stable-Value and SCHI would consist of receivables "that satisfy certain criteria, including that fewer than one hundred twenty (120) days have passed since the date on which the applicable services were provided by the applicable seller to the applicable patient."

99. Founding Partners' monthly performance reports reassured its limited partners that "the loans are secured by the healthcare receivables."

100. Founding Partners' monthly performance reports, which were provided to its limited partners, represented that as of January 2007, approximately 93% of the healthcare receivable payors were rated Aa or above by rating firms such as Moody's, Standard & Poor's, and A.M. Best.

101. Also, the Founding Partners Disclosure Brochure Form ADV Part II represented

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation requirements, as described in the Stable-Value Fund's Offering Memorandum.

102. The Disclosure Brochure also encouraged limited partners to rely on the Offering Materials for descriptions of the lending program and risks.

103. As Mayer Brown knew or should have known, the Disclosure Brochure is required to be, and was provided to all potential investors, and was re-sent to all limited partners annually.

104. The Founding Partners Disclosure Brochure was prepared with the assistance of Mayer Brown.

105. As an essential part of its audits of the financial statements of Founding Partners, E&Y was required by GAAS to understand Founding Partners' business. This required E&Y to read and understand Founding Partners' offering and promotional materials, including those prepared by Mayer Brown, and to read and understand other reports of Stable-Value's performance provided to limited partners. Accordingly, E&Y was obligated to read and understand the offering material and performance reports referenced above. On information and belief, E&Y read and understood these materials.

X. SUN CAPITAL BEGAN TO USE STABLE-VALUE'S FUNDS TO PURCHASE INELIGIBLE AND HIGH-RISK RECEIVABLES AND TO MAKE HIGH RISK LOANS TO RELATED-PARTY ENTITIES.

106. Beginning in approximately 2003, Sun Capital began to invest in receivables of a materially different character than what was permitted in the agreements and what FPCM and Gunlicks were continually representing to limited partners and investors. In addition, Sun Capital began to misuse and misappropriate the proceeds of the loans from Stable-Value by diverting the loan proceeds to affiliated entities, and to themselves, for purposes unrelated to the purchase of receivables.

A. **Worker's Compensation Receivables.**

107. At first, at least by 2004, SCHI began purchasing workers' compensation receivables with funds loaned to SCHI by Stable-Value. The collectability of these receivables was substantially less certain than the healthcare receivables represented to limited partners and investors, in part because they were based on un-adjudicated workers' compensation claims.

108. Moreover, as E&Y documented in its audit workpapers, these workers' compensation receivables "typically have a longer collection period that may be a number of years." In fact, these receivables could and did take many years to collect, creating greater liquidity risks for Sun Capital and, in turn, for Stable-Value's limited partners. It is generally understood that the longer it takes to collect a receivable, the less likely it is that the full amount or any portion thereof will actually be recovered.

109. It was virtually certain that all of the workers' compensation receivables would age beyond 120 days, and substantially so before they could potentially be collected. Indeed, the majority of these workers' compensation receivables SCHI purchased were also not eligible for purchase by SCHI at inception because they were already more than 120 days old (or in some cases, more than 150 days old) at the time of purchase.

110. These workers' compensation receivables also did not present the option for Sun Capital to return any uncollectible amounts because Sun Capital purchased them in bulk at a discount. For instance, Sun Capital purchased some workers' compensation receivables for $11.5 million that had a face value of $23 million.

111. SCHI purchased tens of millions of dollars of ineligible workers' compensation accounts receivable with E&Y's and Mayer Brown's actual knowledge.

B. Disproportionate Share ("DSH") Payments.

112. In or about 2004, SCHI began purchasing (with Stable-Value funds) a risky type of healthcare "receivable" called "Disproportionate Share" payments (commonly referred to in the industry as "DSH"). DSH payments are a special type of Medicare and Medicaid payment the government makes to healthcare providers in poor or underserved areas. The government initially makes a payment at the normal reimbursement rate and in the normal collection period. The second payment – the DSH – is an amount in excess of the normal rate, which the government pays on average two years after the date of service, and then only if the provider is still operating. According to E&Y's workpapers, DSH payments "typically take up to 3 years to collect …."

113. DSH payments did not constitute true "receivables" because the government had no obligation to pay them and could discontinue or reduce the payments at any time. They, at best, constituted a "hope" that the government would pay at some point in the future at a rate similar to those received in the past.

114. Anticipated DSH payments are thus considerably riskier than standard healthcare receivables. They add significant liquidity risks due to their collection delays. More importantly, they add a "going concern" risk that ties their collectability to the provider's ability to continue to operate successfully, because the government is under no obligation to pay them if the hospital enters bankruptcy. The risk was very substantial,

and the purchase of DSH was reckless, because these "receivables" were often purchased from hospitals that were already financially distressed.

115. Anticipated DSH payments were ineligible for purchase under SCHI's agreement with Stable-Value due to the length of time it took to receive them, because they were not receivables for healthcare services, and because they did not actually constitute accounts receivable.

116. The SCHI Agreement was not amended to permit the purchase of workers' compensation accounts receivable or DSH. It was also not amended to change the definition of borrowing base, which was affected by the non-compliant purchases of workers compensation and DSH.

117. SCHI purchased tens of millions of dollars of ineligible DSH payments with E&Y's and Mayer Brown's actual knowledge.

C. **Related Party Transactions, Including Unsecured Diversion of Founding Partners' Funds.**

118. In 2003, Sun Capital's principals, through two separate corporations, began purchasing distressed hospitals and associated real estate. Among these hospitals were long-term acute care facilities that were organized and owned under the corporate structure of Promise Healthcare, Inc. ("Promise Healthcare"), which was owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

119. The Sun Capital principals acquired other hospitals, which they owned and organized under the corporate structure of Success Healthcare, Inc. ("Success"). Success

was likewise owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

120. In addition, by no later than 2006, a substantial and material amount of the healthcare receivables purchased by Sun Capital with Stable-Value funds consisted of receivables purchased from Promise Healthcare – a related party to and under common ownership with Sun Capital. Sun Capital purchased millions of dollars of these receivables from Promise Healthcare in 2006 alone.

121. Also by no later than 2003, Sun Capital began using substantial amounts of Stable-Value funds to provide working capital advances to Promise Healthcare and Success to purchase hospitals and land, to improve hospitals, and to subsidize the substantial losses incurred by struggling hospitals to keep them from closing.

122. These advances were an extremely high-risk misuse of Stable-Value funds, and were in no way authorized by the SCHI Agreement or the SCI Agreement. The advances were unsecured, did not generate income, and were not even subject to any repayment obligations. Indeed Sun Capital was not even motivated to recover the amounts advanced, but simply to keep the hospitals owned by the principals of Sun Capital afloat. It was or should have been apparent to E&Y that Sun Capital never had any intention of even attempting to collect these related-party advances from the hospitals.

XI. FOR YEARS, E&Y SERVED AS FOUNDING PARTNERS' OUTSIDE AUDITOR AND WAS INTIMATELY FAMILIAR WITH FOUNDING PARTNERS, FPCM AND SUN CAPITAL.

A. E&Y Knew the Founding Partners' Audits Were High Risk.

123. E&Y performed audits of the Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

124. E&Y was or should have been intimately familiar with the business, operations and financial condition of Founding Partners as well as FPCM.

125. E&Y negligently, recklessly, or intentionally failed to designate its audits of Founding Partners as "high-risk" which would or should have triggered additional and/or enhanced audit procedures.

126. In its workpapers for at least its audits of Stable-Value's 2005 and 2006 financial statements, E&Y specifically identified the following fraud risks consistent with the audits:

> "Identified Fraud Risks
>
> - Management consists of a few individuals who can override controls in place,
> - Misappropriation of investor cash receipts,
> - The Fund does not have ownership of securities,
> - Investments are not recorded at fair value, and
> - Management utilizes trading activities prohibited by the SEC and other regulatory agencies."

B. **<u>E&Y Was Intimately Familiar With the Operations of and Receivables Factored by Sun Capital.</u>**

127. E&Y knew and understood that essentially all of Stable-Value's business consisted of making loans to Sun Capital.

128. Founding Partners' financial condition was dependent on Sun Capital's ability to repay the loans from Stable-Value and to make scheduled interest payments on the outstanding principal balance.

129. Because essentially all of Stable-Value's business consisted of loans to fund the factoring operations of Sun Capital, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required E&Y to gain an accurate and detailed understanding of the business, operations, and financial condition of Sun Capital and the Promise Healthcare and Success hospitals.

130. Especially because the safety of the loans was a key and critical feature of investment in Stable-Value, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required a thorough and critical examination, evaluation, analysis, and assessment of the nature and value of the collateral securing the loans.

131. E&Y in fact audited the financial statements of Sun Capital for the three (3) fiscal years ended December 31, 2002 through 2004. These audits were performed by personnel from E&Y's South Florida office in Fort Lauderdale, Florida.

132. Prior to 2002, Sun Capital's financial statements were audited by a regional accounting firm.

133. For Sun Capital's 2005 and 2006 fiscal years, E&Y did not audit Sun Capital's financial statements, but rather at E&Y's own recommendation performed certain inadequate AUPs on the Sun Capital assets (receivables) serving as collateral to secure the Stable-Value loans.

134. AUPs are far less stringent and exacting than an audit.

135. E&Y suggested to FPCM, Gunlicks and Sun Capital the switch from audits to AUPs, and FPCM, Gunlicks and Sun Capital accepted E&Y's suggestion.

136. E&Y's Sun Capital audits and AUP work were performed to assist E&Y's audits of Founding Partners' financial statements.

137. As a result of its Sun Capital audits and AUP work, E&Y became intimately familiar with the business operations and activities of Sun Capital, and with the receivables factored by Sun Capital.

138. E&Y knew and understood that Founding Partners was the only source of funding for Sun Capital's business operations.

139. As a result of its audits and AUPs, E&Y knew or should have known that Sun Capital, since 2003, was factoring material amounts of workers' compensation receivables and DSH payments that differed materially in character from the receivables described to investors in Founding Partners' financial statements and offering materials, and that Sun Capital transferred substantial sums of loan proceeds to related parties in the form of unsecured loans or other "advances." In breach of the duties it owed to Founding Partners and to their limited partners, E&Y nonetheless issued unqualified or "clean"

audit opinions on Founding Partners' materially misstated financial statements for the fiscal years ended December 31, 2004 and 2005.

XII. STABLE-VALUE'S FINANCIAL STATEMENTS AND OFFERING MATERIALS MISREPRESENTED THAT THE SUN CAPITAL LOANS WERE FULLY COLLATERALIZED BY COLLECTIBLE SHORT-TERM HEALTHCARE RECEIVABLES.

A. Misrepresentations in Stable-Value's 2006 E&Y-Audited Financial Statements.

140. Stable-Value's annual financial statements for the fiscal year ending December 31, 2006, were issued in June 2007. E&Y issued an unqualified audit opinion dated May 23, 2007 on those financial statements. E&Y's unqualified audit opinion was addressed to "The Partners" of Stable-Value.

141. Upon information and belief, Adam Miller was the senior manager and James Schacterle was the engagement partner for the 2006 audit. They were in charge of the 2006 audit process, and approved the unqualified audit opinion.

142. The 2006 financial statements represented the fair value of the loans to Sun Capital to be $253,967,276.

143. The 2006 Stable-Value financial statements represented that 86% of Stable-Value's total investments consisted of loans to SCHI and 3.44% consisted of loans to SCI. Thus, 89.44% of Stable-Value's total investments consisted of loans to Sun Capital. Those loans constituted approximately 87% of Stable-Value's total reported assets of $291,840,960.

144. The Notes to Stable-Value's financial statement stated that Stable-Value was formed to obtain an above-average return while preserving capital and "[t]he investment strategy utilizes a healthcare and commercial receivable investment product."

145. With respect to Founding Partners' loans to SCHI, the Notes to the 2006 Stable-Value financial statements, audited by E&Y, represented that:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

This representation was materially false and misleading.

146. E&Y's own workpapers for its audit of Stable-Value's 2006 financial statements document that as of December 31, 2006, $54,419,862 of the receivables SCHI purchased with Stable-Value investor funds consisted of workers' compensation receivables, as described above. This amount constituted approximately 22% of the reported value of Stable-Value's loans outstanding to Sun Capital at 31 December 2006. The existence and amount these workers' compensation receivables, the fact that they were ineligible for purchase under the SCHI Agreement, and the high risk associated with their collection were all facts material to Stable-Value's financial statements for the fiscal year ended December 31, 2006, and GAAP required that they be disclosed. But there was no such disclosure of any of these facts in those E&Y-audited financial statements.

147. E&Y knew or should have known that the workers' compensation receivables purchased by Sun Capital with Stable-Value investor funds were substantial

and materially riskier and longer in term than the receivables described in Stable-Value's E&Y-audited financial statements.

148. An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the workers' compensation receivables as follows:

> Workers' Compensation
>
> These receivables typically have a longer collection period that may be a number of years. Workers' compensation collateralized balances totaled approximately $58 million as of December 31, 2007. Sun Capital typically advances only approximately 50-60% on these receivables to their customers given the longer collection period and risk of non-collection.

149. In addition, Sun Capital used substantial and material amounts of Founding Partners' funds to make advances to related-party factoring clients which were financially distressed or insolvent.

150. E&Y's 2006 workpapers reflect over $39 million in outstanding and undisclosed advances funded with Founding Partners investors' cash from Sun Capital to Promise Healthcare, which was then owned by the principals of Sun Capital. On a document entitled "Promise Healthcare Client Summary Report, from 1/1/2006 to 12/31/2006" provided by Sun Capital to E&Y, and bearing a fax transmittal date of March 26, 2007, E&Y noted the following with respect to these advances:

> Note: This Company is not a real factoring client and was set up for tracking purposes. From time to time throughout the year, Sun Capital advances money to Promise Healthcare entities before there are any receivables available for purchase. Sun Capital does not want to charge factoring fees on this advance since there are no outstanding invoices to track, however they also do not want to lose money on these advances. As a result, Sun Capital charges Promise its costs

> of capital with Founding Partners on the amount advanced, until receivables are available for purchase. The associated fees are tracked separately as non-factored fees (see Fee section hereon).

E&Y thus understood that these advances were unsecured and were made with funds Sun Capital borrowed from Founding Partners' investors, without any disclosure in Founding Partners' financial statements.

151. The nature, existence, and amount of these advances were material to the financial statements of Stable-Value and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y audited financial statements.

152. The notes to Stable-Value's 2006 financial statements further specifically represented that:

> Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers.

This representation was false and materially misleading.

153. E&Y's own AUPs with respect to Sun Capital performed in connection with E&Y's audit of Stable-Value's December 31, 2006 financial statements and documented in E&Y's workpapers, demonstrate that at December 31, 2006, at least 27% of the healthcare receivables factored by SCHI were aged beyond 120 days.

154. In addition, E&Y's workpapers further document that as of December 2006, at least $36 million of the healthcare "receivables" SCHI purchased with Stable-Value investor funds consisted of anticipated DSH payments (purchased primarily from the financially distressed hospitals now owned by the principals of Sun Capital.) As

alleged herein, these anticipated DSH payments did not constitute actual "healthcare receivables" as represented in Stable-Value's E&Y-audited financial statements.

155. The existence, nature, and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed due to their impact on risk. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

156. E&Y knew or should have known that the anticipated DSH payments purchased by Sun Capital with Stable-Value investor funds were not disclosed in Stable-Value's E&Y-audited financial statements, and that they were of a substantially and materially riskier and longer in term nature than what those financial statements described as the collateral securing Stable-Value's loans to Sun Capital.

157. An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the anticipated DSH payments as follows:

> DSH
>
> Disproportionate Share Hospital receivables ("DSH") represent receivables from the government for care provided to low income patients under Medicaid and other programs. These amounts typically take up to 3 years to collect however ultimate collection experience has been very good per the CFO of Sun Capital.

158. As alleged above, by their very nature the anticipated DSH payments and the vast majority of the workers' compensation receivables would not be collected (if at all) within 120 days.

159. The fact and amount of the receivables and anticipated DSH payments aged beyond 120-days were material to Stable-Value's financial statements, and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

160. Stable-Value's 2006 E&Y-audited financial statements were also false and materially misleading because they failed to disclose that a substantial and material amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare – a related party to Sun Capital. The related-party nature of these purchases was material to Stable-Value's 2006 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

161. E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these purchases should have been disclosed in Stable-Value's financial statements.

162. Stable-Value's 2006 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

163. E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that

associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

164. Stable-Value's 2006 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing ineligible receivables and by giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

165. Moreover, the financial statements further represented that: "The General Partner believes that the carrying value of the financing agreements approximates fair value."

166. Stable-Value's 2006 E&Y-audited financial statements grossly and materially overstated the fair value of Stable-Value's loans to Sun Capital. E&Y failed to perform adequate audit procedures to determine whether this representation was false.

167. Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

168. However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

169. An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

B. <u>Stable-Value's 2004 and 2005 E&Y-Audited Financial Statements Contain Similar Material Misrepresentations.</u>

170. Stable-Value's annual financial statements for the fiscal years ending December 31, 2004 and 2005, contained misrepresentations substantially similar to those in Stable-Value's 2006 E&Y-audited financial statements.

171. E&Y issued an unqualified audit opinion dated June 6, 2005 on Stable-Value's 2004 financial statements. That audit opinion was addressed to "Partners" of Stable-Value.

172. Stable Value's 2005 financial statements were issued June 27, 2006.

173. E&Y issued an unqualified audit opinion dated June 23, 2006 on Stable-Value's 2005 financial statements. That audit opinion was addressed to "The Partners" of Stable-Value.

174. Upon information and belief, Jack Mulhbeier was the engagement partner and Cliff Stoops was the senior manager for the 2004 and 2005 audits. They were in charge of the 2004 and 2005 audits, and approved the unqualified audit opinions.

175. The Notes to Stable-Value's 2004 and 2005 E&Y-audited financial statements represented that:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue

> Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

176. The Notes to Stable-Value's 2005 E&Y-audited financial statements further represented that:

> The individual underlying healthcare and commercial trade receivables, and additional Borrowers' assets, will serve as collateral for the loans to the Borrowers. … **Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers**.

(Emphasis added.)

177. The foregoing representations in Stable-Value's 2004 and 2005 E&Y-audited financial statements were materially false and misleading. A substantial and material amount of the funds Stable-Value loaned to SCHI as of December 31, 2005 were used for purposes other than those represented in Stable-Value's financial statements.

178. Stable-Value's 2004 and 2005 financial statements were materially false and misleading because, as of December 31, 2004 and 2005, SCHI had used substantial and material amounts of Stable-Value loan proceeds to purchase anticipated DSH payments as described herein. These anticipated DSH payments were documented in E&Y's workpapers, and totaled at least $36 million at December 31, 2005, and $12.7 million at December 31, 2004.

179. The existence, nature and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited 2004 or 2005 financial statements.

180. E&Y knew of the existence and materiality of the anticipated DSH payments SCHI purchased with Stable-Value loan proceeds, but nonetheless issued unqualified audit opinions on Stable-Value's 2004 and 2005 financial statements without disclosing or requiring disclosure of the existence, nature or amount of these anticipated DSH payments.

181. SCHI had also used a substantial and material amount of the funds Stable-Value loaned to it as of December 31, 2005 to make unsecured loans or advances to related parties, including Promise Healthcare. The nature and amount of these related party loans or advances was material to the financial statements of Stable-Value, but there was no such disclosure in Stable-Value's 2005 financial statements.

182. E&Y knew or should have known of the existence and materiality of SCHI's unsecured loans or advances to related parties described above, but nonetheless issued an unqualified audit opinion on Stable-Value's 2005 financial statements without disclosing or requiring any disclosure of these related party loans or advances.

183. E&Y's workpapers also document E&Y's knowledge that, as of December 31, 2005, Sun Capital owned over 25,000 workers compensation receivables which it had purchased with Stable-Value loan proceeds. According to documents included in E&Y's workpapers, these workers compensation receivables at December 31, 2005 totaled over $56.3 million, with more than $51.3 million aged over 180 days.

184. The existence, amount, and age of these workers compensation receivables was material to Stable Value's 2005 financial statements, but there was no disclosure of the existence, amount, or age of these workers compensation receivables in Stable-

Value's 2005 financial statements. As a result, Stable-Value's 2005 financial statements were materially misstated and omitted material facts.

185. Despite its knowledge of such workers compensation receivables at December 31, 2005, E&Y issued unqualified audit opinions on Stable-Value's 2005 financial statements, without requiring disclosure of these receivables.

186. Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that a substantial and material amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare—a related party to Sun Capital. The related party nature of these purchases was material to Stable-Value's 2005 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

187. E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these transactions should have been disclosed in Stable-Value's financial statements. E&Y, however, issued an unqualified audit opinion on Stable-Value's 2005 financial statements without any such disclosure.

188. Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that as of December 31, 2005, SCHI had used a substantial and material amount of the funds Stable-Value loaned to it to purchase workers compensation receivables, as described herein. The existence, nature

and amount of these workers compensation receivables was material to the financial statements of Stable-Value, and GAAP required their disclosure. But there was no such disclosure in Stable-Value's E&Y-audited 2005 financial statements.

189. E&Y knew or should have known of the existence or amount of these workers compensation receivables, which served as collateral for Stable-Value's loans to SCHI, and E&Y knew or should have known that the existence, nature and amount of these workers compensation receivables was material to Stable-Value's 2005 financial statements. But E&Y issued an unqualified audit opinion on those financial statements without any such disclosure.

190. Stable-Value's 2005 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

191. E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

192. Stable-Value's 2005 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing receivables that were not eligible for purchase pursuant to the SCHI Agreement or SCI Agreement and by

giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

193. Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

194. However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

195. An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

C. E&Y Aided and Abetted the Dissemination of the False and Fraudulent January 2007 Confidential Offering Memorandum Prepared By Mayer Brown.

196. The January 2007 Confidential Offering Memorandum prepared by Mayer Brown identified Mayer Brown as Stable-Value II's counsel and E&Y as Stable-Value II's "independent accountants" and "independent auditors."

197. Mayer Brown caused the formation of Stable-Value II in Delaware, and obtained authorization for Stable-Value II to conduct business in Florida.

198. Mayer Brown formed Stable-Value II, because Stable-Value had reached the maximum number of investors it could have under its exemption from registration,

and thus had a very limited ability to raise capital for new loans for the purchase of either short-term healthcare receivables, or workers compensation receivables or DSH payments.

199. GAAS required that E&Y read and understand the January 2007 Confidential Offering Memorandum in order to gain and maintain an understanding of Founding Partners' business. Indeed E&Y, at some point, placed and maintained a copy of the January 2007 Confidential Offering Memorandum in its audit workpapers and/or permanent file.

200. The January 2007 Confidential Offering Memorandum represented that: "It is anticipated that the primary business of the Partnership will be to make secured loans to the Borrower [Sun Capital]."

201. The January 2007 Confidential Offering Memorandum specifically represented that:

> **Pursuant to the Credit Agreement, the Borrower agrees to use the proceeds of the Loans to finance the borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic, or other healthcare related goods or services** (such receivables being referred to collectively as "**healthcare receivables**" payable by third-parties such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid ("**third-party payors**").
>
> Pursuant to the Credit Agreement, **loan proceeds that have not been used by the borrower to acquire Healthcare Receivables are to be held in a bank account (the "holding account") until they are used to acquire Healthcare Receivables or to make payments to the partnership**.

202. These representations were false and materially misleading. The January 2007 Confidential Offering Memorandum does not mention loan proceeds being used to purchase workers' compensation receivables, anticipated DSH payments, or to make unsecured advances to related-party distressed hospitals, as described above.

203. When the Confidential Offering Memorandum was prepared by Mayer Brown for use by Stable-Value II, Mayer Brown knew that Founding Partners' money was being used to finance unsecured loans, and to make advances to borrowers that were not secured by "healthcare receivables," making the Memorandum materially false and misleading.

204. At the time Mayer Brown drafted the Stable-Value II Confidential Offering Memorandum, it knew that some of the funds raised under the Stable-Value II Confidential Offering Memorandum would be used to finance the purchase of workers compensation receivables and DSH payments.

205. Mayer Brown knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

206. E&Y knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

207. The January 2007 Confidential Offering Memorandum further represented that "[t]he General Partner, officers of the General Partner, and the Partnership have no experience in evaluating, purchasing, billing, collecting or otherwise servicing Healthcare Receivables, and will rely completely on the Borrower."

208. In light of FPCM's lack of expertise, E&Y knew that FPCM and innocent decision-makers at FPCM and Founding Partners were relying on E&Y to perform a thorough and professional evaluation of the receivables purchased by Sun Capital.

209. E&Y and Mayer Brown knew that FPCM and Gunlicks would use the January 2007 Confidential Offering Memorandum to communicate the Founding Partners investment strategy and use of funds to Founding Partners limited partners and other innocent decision-makers.

210. The preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed to Founding Partners and to their limited partners by FPCM, Gunlicks, and Mayer Brown.

211. E&Y knew that the preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed by FPCM, Gunlicks, and Mayer Brown.

212. E&Y provided substantial assistance to the foregoing breaches of fiduciary duties by issuing an unqualified audit opinion on Stable-Value's 2006 financial statements on May 23, 2007, and by failing to issue an adverse audit opinion and going concern qualification on Stable-Value's 2007 financial statements despite its professional and contractual duties to do so.

XIII. MAYER BROWN CONCEALED THE DIVERSION AND MISUSE OF FOUNDING PARTNERS ASSETS DURING THE SEC'S FIRST INVESTIGATION, FROM 2002 TO 2007

213. The SEC conducted two investigations related to Founding Partners. The first investigation began in 2002 as "a non-public inquiry into" FPCM following an

examination of the books and records of FPCM conducted pursuant to Section 204 of the Investment Advisers Act of 1940, and resulted in a "Corrected Order Instituting Administrative and Cease-And-Desist Proceedings, Making Findings, and And Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Section 203(e) of the Investment Advisers Act of 1940" in December 2007. The second investigation began in 2008 and resulted in the SEC civil action for the appointment of the Receiver in this case, and for other emergency relief.

214. In 2002, the SEC began investigating FPCM and Gunlicks for potential violations of various federal securities laws. Mayer Brown represented FPCM and Gunlicks before the SEC.

215. The SEC's first investigation from 2002 to 2007 was broad in scope, and the SEC specifically inquired about a wide range of potential violations of law, including breaches of fiduciary duty and fraud by Gunlicks and FPCM, and about material misrepresentations and omissions in the Offering Materials, Disclosure Brochures, Performance Reports, and Audited Financial Statements "regarding the misappropriation and misuse of investor funds," among other subjects.

216. The SEC requested a broad range of documents from FPCM and Gunlicks, including without limitation the Offering Materials, draft and audited financial statements for the Founding Partners Funds and Sun Capital entities, Performance Reports, Credit and Security Agreements, and documents evidencing all loans between Founding Partners and Sun Capital. FPCM and Gunlicks produced documents to the SEC in response to several requests in 2002 and 2003, and Mayer Brown also produced and

facilitated the production of documents by FPCM and Gunlicks to the SEC from 2004 through 2007.

217. Mayer Brown knew that the SEC's first investigation was broad in scope and included many potential violations of federal securities laws and material representations in the Offering Material, Performance Reports, audited financial statements, or disclosure brochures, including violations relating to the misuse and misrepresentations about the uses of investors' funds. Upon information and belief, Mayer Brown reviewed all of the SEC requests for information and all of the documents produced by or on behalf of FPCM and Gunlicks during the investigation.

218. Mayer Brown negotiated the eventual settlement with the SEC on FPCM's and Gunlicks' behalf from approximately late 2003 to December 2007.

219. While the first SEC investigation was continuing, and while Mayer Brown was attempting to negotiate a settlement of the SEC investigation, Mayer Brown was aware of the continuing and increasing diversion of Founding Partners assets to Sun Capital for the purchase of workers compensation receivables, DSH payments, unsecured loans to acquire hospitals, and for other improper and undisclosed purposes.

220. Mayer Brown was aware of the ever increasing diversions of Founding Partners loans from several sources, including discussions with Gunlicks regarding proposed amendments to the Credit Agreements to include caps on the amounts of workers compensation receivables and DSH payments that had been purchased with Founding Partners assets, receiving documents from Founding Partners and the Sun entities to prepare the proposed amendments to the Credit Agreements and draft Offering

Materials, and drafting loan and mortgage agreements to document previously made unsecured loans for the acquisition of hospitals and real estate.

221. Despite its knowledge that substantial amounts of Founding Partners assets were being diverted for improper uses, Mayer Brown never disclosed the improper uses of funds to the SEC, to the limited partners or investors, or to others who might have acted to protect the Funds and the investors against the fraud and diversion of Founding Partners assets.

222. Nor did Mayer Brown demand that FPCM and Gunlicks supplement the Offering Materials or Disclosure Brochure to disclose these uses of the funds, the facts and the risk associated with these uses of the funds, or withdraw from the representation and inform the limited partners and investors that the Offering Materials and Disclosure Brochure should not be relied upon.

223. Furthermore, the original settlement proposals required Founding Partners to retain an Independent Compliance Consultant to, among other things:

> Review and evaluate Founding Partners' policies, practices and procedures to determine their adequacy to detect and reasonably prevent Founding Partners and its associated persons from (1) violating the federal securities laws; (2) publishing, circulating or distributing any report filed with the Commission, which contain any untrue statement of a material fact, or which is otherwise false and misleading; and (3) publishing, circulating or distributing any confidential offering memoranda and any related written disclosure pertaining to the hedge funds, which contain any untrue statement of a material fact, or which is otherwise false and misleading;

224. Upon information and belief, in negotiations with the SEC, Mayer Brown told the SEC that FPCM and Gunlicks had corrected any deficiencies in the Offering Materials, performed a full inquiry into any alleged misconduct, and taken steps to address the weaknesses in internal controls or compliance policies.

225. During the summer of 2007, Mayer Brown continued to negotiate with the SEC regarding the requirement for an independent compliance consultant, or compliance monitor, and to represent to the SEC that no such relief was called for, because FPCM and Gunlicks had already taken all of the steps required to resolve the SEC's concerns in the investigation.

226. As a result of Mayer Brown's representations to the SEC and negotiations with the SEC, and the concealment from the SEC of the fraud that was already under way at FPCM, Founding Partners was not required to obtain an independent compliance consultant or compliance monitor.

227. In December 2007, the SEC issued a Corrected Order Instituting Administrative Cease and Desist Proceedings against FPCM and Gunlicks which settled the SEC's First Investigation.

228. Mayer Brown drafted a Cover Letter and mailed the Corrected Order and Cover Letter to all Founding Partners limited partners and investors in January 2008.

229. The Cover Letter represented to the limited partners and investors that the SEC investigation was "successfully resolved."

230. That representation was false, because Mayer Brown had only succeeded in delaying the discovery of the fraud by concealing it from the SEC and by failing to

disclose to the SEC and to the Funds and their investors the truth about the use of the funds, which allowed the fraud to continue and the damages resulting from the fraud to increase.

231. The representation in the Cover Letter was also misleading because it omitted material information regarding the actual scope of and concerns expressed in the SEC's investigation, including the SEC's concerns about the misuse and misrepresentations concerning the actual uses of the funds, omitted any disclosure of the true facts concerning the misuse and misrepresentations about the uses of the investors' funds, and represented that Founding Partners was in compliance with federal laws and that the Offering Materials and other information provided to investors properly represented the Founding Partners loans and collateral.

232. The representation in the Cover Letter was also false and misleading because, when read together with the Corrected Order, it suggested that the true facts relating to the issues of concern to the SEC had been disclosed to the SEC and resolved by the Corrected Order.

XIV. UNABLE TO REPAY FOUNDING PARTNERS, SUN CAPITAL WENT OUT OF THE FACTORING BUSINESS AND DEFAULTED.

233. Eventually, due to the long delays in collection, outright inability to collect receivables and other misuses of Founding Partners' funds as described herein, Sun Capital was unable to service its debt to Founding Partners by making scheduled interest payments from revenue generated by its factoring operations.

234. In the fall of 2008, FPCM received a flood of redemption requests for Stable-Value, which totaled approximately $382 million (or 70% of the fund assets) by year-end. As a result of Sun Capital's undisclosed misuses and dissipation of Founding Partners investment, Founding Partners faced severe liquidity problems and could not satisfy the redemptions. As a result, in October 2008, Gunlicks informed Sun Capital that FPCM would not loan additional funds to Sun Capital.

235. In November 2008, Sun Capital told Gunlicks it was exiting the factoring business. Sun Capital's principals and Gunlicks discussed a future plan to raise capital to repay all Sun Capital borrowings from Stable-Value. At that time, Sun Capital's principals told Gunlicks they needed $8 to $12 million in working capital from Stable-Value to keep their hospitals operating. Subsequently, in approximately December 2008, Founding Partners provided Sun Capital with approximately $24 million in additional investor funds.

236. After receiving the approximately $24 million in additional Founding Partners funds, Sun Capital stopped making interest payments on its loans from Founding Partners, and defaulted.

237. On information and belief, SCI and SCHI are incapable of repaying all or a substantial part of the loans from Founding Partners, and there is insufficient collateral available to cover the amounts due and owing Founding Partners' investors.

238. According to the books and records of Founding Partners, the amount of the loans (principal and interest) outstanding from Founding Partners to SCHI and SCI is in excess of $550 million.

XV. <u>DUTIES E&Y AND MAYER BROWN OWED TO FOUNDING PARTNERS AND TO THEIR INVESTORS AND LIMITED PARTNERS.</u>

A. <u>E&Y's Duties Pursuant To Professional Auditing Standards.</u>

239. E&Y is required by law to act as a public watchdog, a duty it breached repeatedly in connection with the Founding Partners audits.

240. E&Y owed to Founding Partners and their limited partners the duty to perform its audits in accordance with the Standards promulgated by Public Company Accounting Oversight Board ("PCAOB") and by the American Institute of Certified Public Accountants ("AICPA"). These Standards incorporate and include GAAS.

241. There are ten generally accepted auditing standards originally promulgated by the AICPA: three General Standards, three Standards of Field Work and four Standards of Reporting. Those standards are as follows:

> (a) General Standards.
>
> 1. The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor.
>
> 2. In all matters relating to the assignment, an independence of mental attitude is to be maintained by the auditor or auditors.
>
> 3. Due professional care is to be exercised in the performance of the audit and the preparation of the report.
>
> (b) Standards of Field Work.
>
> 1. The work is to be adequately planned and assistants, if any, are to be properly supervised.

> 2. A sufficient understanding of internal control is to be obtained to plan the audit to determine the nature, timing, and extent of tests to be performed.
>
> 3. Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.
>
> (c) Standards of Reporting.
>
> 1. The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.
>
> 2. The report shall identify those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.
>
> 3. Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.
>
> 4. The report shall contain either an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.

242. E&Y was required by GAAS to plan and perform its audits to obtain reasonable assurance that the financial statements being audited were free of material misstatement.

243. The requirement of independence embodied in the second general standard requires that "[t]o *be* independent, the auditor must be intellectually honest; to be *recognized* as independent, he must be free from any obligation to or interest in the client,

its management, or its owners." AU § 220.03 (emphasis in original). Independence requires that auditors, such as E&Y, must avoid even the appearance or question that they are not wholly independent.

244. Moreover, "due professional care requires the auditor to exercise professional skepticism. … Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence." AU § 316.13. Thus, E&Y could not take statements made by FPCM, Gunlicks or the Sun Capital entities at face value.

245. In addition, in conducting an audit in accordance with generally accepted auditing standards, the auditor must recognize that "[m]anagement has a unique ability to perpetrate fraud because it is in a position to directly or indirectly manipulate accounting records and present fraudulent financial information. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively." AU § 316.08.

246. "During the course of the audit, the auditor may become aware of significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment. The auditor should gain an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets." AU § 316.66.

247. GAAS requires that the auditor "be aware of the possible existence of material related party transactions," AU § 334.04, and that the auditor "place emphasis on testing material transactions with parties he knows are related to the reporting entity." AU § 334.07.

248. GAAS requires that the auditor audit material related-party transactions with heightened skepticism because such transactions are presumed not to be arms-length transactions. With respect to related-party transactions, GAAS requires that the auditor apply procedures necessary to obtain satisfaction concerning the purpose, nature and extent of these transactions and their effect on the financial statements. Such procedures "should extend beyond inquiry of management." AU § 334.09.

249. According to GAAS, "[u]ntil the auditor understands the business sense of material transactions, he cannot complete his audit." AU § 334.09 n.6.

250. In its audits of Founding Partners' financial statements, E&Y was obligated by GAAS "to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited …." AU § 341.02.

251. E&Y also had a duty to comply with all of the Statements on Auditing Standards ("SAS"), which are issued by the Auditing Standards Board ("ASB") of the AICPA and incorporated into GAAS.

252. GAAS required that E&Y obtain an understanding of the business organization and operating characteristics of Founding Partners sufficient for E&Y to conduct its audits in accordance with GAAS.

253. As part of its audits, E&Y was thus required to read and become familiar with Founding Partners' organizational documents, including Founding Partners' partnership agreements, Offering Memoranda pertaining to the Funds and promotional materials provided to limited partners and investors pertaining to the Funds in order to familiarize itself with the business of Founding Partners. E&Y was also required to read and understand the prior year's financial statements of Founding Partners and the prior year auditor's working papers pertaining to the audits of those financial statements. E&Y in fact read all of these materials (and copies of them were maintained in E&Y's audit workpapers). E&Y thus knew that a key feature of investment in Founding Partners was the safety of the investment based upon FPCM's and Gunlick's assurance that the loans to SCHI were fully collateralized by short-term healthcare receivables payable by insurance companies or by the government and that any such receivables aged 120 days or more were either replaced or removed from any future lending base.

254. As a firm of Certified Public Accountants, E&Y was obligated to obtain sufficient evidential material to support its unqualified opinion. The auditors must gain an understanding of the client's contracts, course of dealing and transactions with third parties. AU § 330.25.

255. E&Y, as an essential part of its audits of Stable-Value's financial statements, was required by GAAS to read and understand the SCHI Agreement and the SCI Agreement.

256. E&Y knew or should have known that SCHI's factoring did not comply with the SCHI Agreement.

257. Explanatory notes to the financial statements are an integral part of the financial statements, AU § 551.02. GAAS thus requires that the auditor implement sufficient audit procedures and obtain sufficient competent evidential matter to give the auditor reasonable assurance of the accuracy of representations and assertions made in the notes to the financial statements. In the case of its audits of the Founding Partners' financial statements, E&Y was thus obligated by GAAS to implement audit procedures and obtain sufficient, competent evidential matter to give E&Y reasonable assurance of the accuracy of, among other representations and assertions, the assertion in the Notes to Stable-Value's financial statements that SCHI would use investor funds loaned by Founding Partners to purchase healthcare receivables payable by third-party payors, such as insurance companies, Blue Cross/Blue Shield Plans and government programs such as Medicare and Medicaid, and that any underlying receivable aged beyond 120 days would be replaced or removed from future fundings.

258. GAAS further required that E&Y evaluate the impact on the Founding Partners financial statements of any failure of Founding Partners to comply with investment restrictions imposed by contract or by governmental regulation. AICPA Audit and Accounting Guide, Audits of Investment Companies ("AIC") §§ 5.72-.75.

259. As auditors of the financial statements, E&Y was required by GAAS and otherwise to disclose or require disclosure of information material to the fair presentation of the financial position of Founding Partners.

B. **<u>Mayer Brown's Professional Duties As Counsel To Founding Partners</u>.**

260. Upon information and belief, Mayer Brown began providing legal services and advice to Founding Partners in late 1999, before a written engagement letter was signed.

261. In January 2000, Mayer Brown transmitted an engagement letter addressed to FPCM, including an undertaking to, among other things, provide services relating to lending facilities between Stable-Value's predecessor and Sun Capital Healthcare, Inc. ("SCHI"), which was to borrow monies from Stable-Value. Although Mayer Brown stated for conflict of interest purposes: "it is only [FPCM] who we will represent and not [FPCM's] subsidiaries, partnerships in which [FPCM is] a partner or related companies," Mayer Brown knew and intended that its work was created for use by Stable-Value, as the lender under the facilities. Only FPCM (through Gunlicks) and Mayer Brown executed that and the subsequent engagement letters.

262. Mayer Brown drafted the SCHI Credit Agreement, purportedly under the engagement letter and for reliance by Founding Partners and third parties, in which Mayer Brown declared it was counsel for Stable-Value.

263. Mayer Brown also declared that it was counsel for Stable-Value in rendering advice regarding the SCHI Credit Agreement on potential or actual amendments, rights and remedies, and enforcement of the agreement.

264. In January 2001, Mayer Brown sent a second engagement letter to FPCM, in which Mayer Brown agreed to perform services in connection with a participation agreement between Stable-Value's predecessor and Global Fund. Mayer Brown also

agreed to draft supplements to an offering memorandum that were to be used to solicit investments in Stable-Value. In the January 3, 2001 letter, Mayer Brown stated: "we understand that [FPCM] has a conflict of interest in connection with the Participation Agreement, because [FPCM is] an affiliate of both the seller and the buyer of the participations. That conflict also affects us. You hereby waive any conflict of interest ..." Only Mayer Brown and FPCM executed the engagement letter; none of the Founding Partners executed the engagement letter.

265. In January 2002, Mayer Brown entered into another engagement agreement with FPCM, in which Mayer Brown agreed to provide services concerning a Credit and Security Agreement between Stable-Value and SCI. SCI purchased commercial accounts receivable with funds borrowed from Stable-Value. Although Mayer Brown stated in the 2002 engagement agreement, concerning conflicts of interest, that: "it is only you who we will represent and not the Stable-Value Fund, your subsidiaries, any partnerships in which you are a partner or any related companies," Mayer Brown actually provided and intended its legal services for and legal advice on behalf of Founding Partners.

266. Just as Mayer Brown had stated in the SCHI Credit Agreement, Mayer Brown again declared that it was counsel to the lender (Stable-Value), and that it was also counsel for Stable-Value in rendering advice regarding the SCHI Credit Agreement on potential or actual amendments, rights and remedies, and enforcement of the agreement.

267. Mayer Brown knew and intended that Founding Partners and third parties would rely on those representations.

268. Mayer Brown drafted offering memoranda and/or supplements for Stable-Value and Stable-Value II, and other prepared documents in which Mayer Brown was identified as the attorneys for Stable-Value and Stable-Value II.

269. Mayer Brown initially started drafting the Stable-Value II Confidential Offering Memorandum in 2003, except for the Stable-Value II Confidential Offering Memorandum, Mayer Brown acknowledged in all drafts of the offering memorandum that it "has acted as legal counsel to the Partnership in connection with this offering of the Interests of the Partnership and the organization of the Partnership."

270. Mayer Brown knew and intended that Founding Partners and third parties would rely on those representations.

271. Upon information and belief, Stable-Value paid for the preparation of the Stable-Value Offering Memorandum Supplements, and the Stable-Value II Offering Memorandum.

272. In addition, Mayer Brown drafted numerous documents over several years in which it declared it was counsel to Stable-Value or Stable-Value II including a closing checklist for a draft credit and security agreement between SCHI and Stable-Value and Stable-Value II, closing checklist for a loan from Stable-Value for the Bossier real estate transaction, closing checklist for a loan from Stable-Value for HLP Properties of Port Arthur, closing list for a draft credit and security agreement between Promise Healthcare and Stable-Value and Stable-Value II, and a closing list for a draft debt restructuring between Promise and Stable-Value and Global Fund.

273. Also, throughout 2007 and 2008 Mayer Brown repeatedly drafted Audit Letters that were sent to E&Y, in which Mayer Brown represented that it had represented Stable-Value, Hybrid-Value, and Stable-Value II.

274. Mayer Brown knew and intended that E&Y would use and rely on those representations.

275. Furthermore, Mayer Brown knew, because it received documents prepared by Founding Partners, that the Founding Partner Funds reasonably believed and were representing to investors and others that Mayer Brown was their counsel.

276. For example, Mayer Brown received a copy of Founding Partners' Key Mann Life Insurance Policy in 2004, which listed Mayer Brown as counsel to Stable-Value.

277. Although Mayer Brown knew that the Founding Partners Funds considered Mayer Brown to be the Funds' attorneys, Mayer Brown never attempted to tell Founding Partners or the investors that it did not represent the Funds.

278. In or about February 2008, Mayer Brown transmitted another engagement agreement to FPCM, which FPCM countersigned. In the 2008 engagement agreement, Mayer Brown agreed to "provide legal services to Founding Partners Capital Management Company ... with respect to the you [sic] and the entities listed on Schedule I hereto." The entities listed by Mayer Brown on Schedule I were Founding Partners.

279. Over a period of many years, Mayer Brown was in fact the primary attorney for Founding Partners. Mayer Brown performed a wide range of services for Founding Partners, including, but not limited to: (a) advising on compliance with SEC

regulations; (b) representing FPCM before the SEC; (c) drafting offering memoranda and/or supplements for Stable-Value and Stable-Value II; (d) drafting amendments to the SCHI Agreement that were never finalized; (e) advising and drafting documents for the transaction with Promise Healthcare; (f) advising and drafting documents in connection with the Bossier Land Acquisition Corp. transaction; (g) advising and drafting documents in connection with the HLP Properties and Lagniappe transactions; (h) drafting and/or advising for written amendments to the SCHI Agreement extending the maturity date; (i) negotiating with the Sun Capital Entities to change the terms of the parties' relationship; (j) advising on reorganization and bankruptcy issues; (k) providing tax advice; and (l) providing litigation services. Founding Partners considered Mayer Brown to be their primary counsel.

280. Conflicts of interest existed between FPCM and the Founding Partners because their respective interests diverged and because FPCM owed fiduciary duties to Founding Partners, and to the limited partners and investors. It was in FPCM's interest, but not in the interests of Founding Partners, to maximize the amounts loaned to SCHI and SCI in order to generate ever-increasing management fees paid to it by the Founding Partners, and to fund the increasing loans to SCHI and SCI. Mayer Brown recognized and acknowledged the conflicts of interest but, upon information and belief, Mayer Brown never received necessary waivers of conflicts of interest from any of the Founding Partners.

281. Among the services Mayer Brown performed for Founding Partners was the drafting of the "Confidential Offering Memorandum" dated January 2007 for Stable-

Value II. The January 2007 Confidential Offering Memorandum grossly and materially misrepresented: (a) the nature of the collateral used to secure Founding Partners' loans to Sun Capital; (b) Sun Capital's use of the loan proceeds; and (c) the risks associated with investment in Founding Partners. In addition, as described in both the SCHI Agreement and SCI Agreement, Mayer Brown agreed to provide ongoing and continuous legal advice regarding proposed amendments to the agreements and Founding Partners' rights and remedies under the agreements.

282. Mayer Brown owed fiduciary duties to Founding Partners and to the limited partners and other innocent decision-makers, including the duties of due care, loyalty, and full disclosure of material facts. Founding Partners and the limited partners and other innocent decision-makers reposed trust and confidence in Mayer Brown and reasonably relied upon Mayer Brown's expertise and advice.

XVI. MAYER BROWN BREACHED ITS PROFESSIONAL OBLIGATIONS TO FOUNDING PARTNERS.

283. Commencing in 2002, the SEC began investigating FPCM for violations of various federal securities laws. Mayer Brown represented FPCM before the SEC and facilitated the production of documents by FPCM to the SEC. Mayer Brown also negotiated with the SEC on FPCM's behalf.

284. On or about December 3, 2007, FPCM and the SEC settled the allegations against FPCM resulting in the issuance of a Cease-and-Desist Order. FPCM was required to cease-and-desist violating Section 17(a) (2) of the Securities Act of 1933

which proscribes obtaining investments through the use of untrue statements of material fact.

285. In the Commission Action, the SEC alleged that FPCM had violated the terms of the December 3, 2007 Cease-and-Desist Order. Mayer Brown failed to advise Founding Partners' limited partners and other innocent decision-makers that the offering memoranda prepared by Mayer Brown included representations that Mayer Brown knew to be inaccurate, and failed to advise that the continued use of those offering memoranda violated, among other things, the Cease-and-Desist Order.

286. By the Fall of 2008, Mayer Brown knew that Founding Partners was faced with severe liquidity problems. In the Fall of 2008, Founding Partners received redemption requests of approximately $382 million. Mayer Brown knew about the redemption requests and knew that Founding Partners was unable to fully fund redemption requests. Mayer Brown advised FPCM that it need not fully honor investors' redemption requests.

287. Mayer Brown also advised FPCM not to waive its management fee in October 2008 despite the overwhelming rush of redemption requests; this illustrated the patent conflict of interest between Mayer Brown's representation of FPCM and its representation and provision of legal services to the Founding Partners.

288. Mayer Brown drafted a communication to be transmitted to Founding Partners' limited partners stating that Founding Partners does "not anticipate fully meeting the existing December 31, 2008 withdrawal requests." Mayer Brown knew this

statement was misleading because it knew at best Founding Partners was only going to pay a small fraction of each investor's redemption request.

289. Mayer Brown also wrote in the communication to limited partners that Founding Partners was "not currently experiencing abnormal illiquidity." Upon information and belief, Mayer Brown knew this statement was false and misleading.

290. Mayer Brown failed to properly disclose material negative information in the offering memoranda and/or supplements and other communications it prepared for Stable-Value and Stable-Value II.

291. In the offering memoranda and/or supplements drafted by Mayer Brown it was represented that Founding Partners would only lend for purchase of short-term accounts receivable defined to mean those accounts receivable expected to be collected or replaced within 120 days.

292. The offering memoranda and/or supplements drafted by Mayer Brown represented that the loans to SCHI were fully secured by healthcare accounts receivable. Mayer Brown knew that was not true when the offering memoranda and/or supplements were prepared by Mayer Brown, and knew that was not true when it knew that the offering memoranda and/or supplements were provided to limited partners and other innocent decision-makers.

293. Mayer Brown violated its duties to Founding Partners by:

(a) representing all of the Founding Partners entities despite having an unwaivable conflict of interest between representing FPCM and representing the Founding Partners which caused it to breach its duties of loyalty to all of its clients and caused it to provide advice that was counter to the interests of the Founding Partners;

(b) failing to adequately advise limited partners and other innocent decision-makers concerning risks in offering memoranda and/or supplements prepared or reviewed by Mayer Brown;

(c) failing to advise limited partners and other innocent decision-makers about known deviations from and breaches of contract, and about the Founding Partners' inadequate protections against default by the factoring companies;

(d) participating in and drafting limited partner communications that materially misrepresented and concealed the conflicts of interest, known deviations and from and breaches of contract, and other risks described above; and

(e) failing to either advise Founding Partners to supplement the Stable-Value Confidential Offering Memorandum and Stable-Value II Confidential Offering Memorandum to disclose the use of funds for workers compensation receivables, DSH receivables, and unsecured loans for hospital acquisitions and working capital, or advising the limited partners and investors that the Confidential Offering Memorandums should no longer be relied upon and withdrawing from the representation of Founding Partners.

XVII. E&Y PERFORMED GROSSLY DEFICIENT AUDITS OF STABLE-VALUE'S 2006 AND 2007 FINANCIAL STATEMENTS.

A. 2006 Financial Statements.

294. In breach of the duties it owed to Founding Partners, E&Y performed grossly deficient audits of Stable-Value's 2006 financial statements. E&Y deviated in numerous respects from applicable professional standards referenced herein.

295. E&Y's Fort Lauderdale, Florida office performed AUPs on Sun Capital's portfolio of accounts receivable at December 31, 2006. These procedures were performed by E&Y as a critical and essential part of the audit of Stable-Value's 2006 financial statements.

296. E&Y failed to plan or implement appropriate audit procedures to evaluate the ability of Sun Capital or the related entities to repay the Founding Partners' loans. This was a gross deviation from GAAS because the collectability of these receivables was a significant risk.

297. E&Y's workpapers do not indicate that E&Y even undertook an analysis of the need for an allowance or reserve for loan loss to account for the risk of non-collectability of the loans to Sun Capital. This was a gross deviation from GAAS and GAAP, especially in light of E&Y's actual knowledge of Sun Capital's activities and the substantially deteriorated quality of the collateral used to secure Founding Partners' loans to Sun Capital.

298. E&Y failed to plan or implement appropriate audit procedures to evaluate the collectability and value of the Sun Capital receivables, which served as collateral for

the loans from Founding Partners. Indeed, E&Y inexplicably failed to identify collectability of the receivables as even being a significant risk. These were gross violations of GAAS.

299. E&Y failed to give appropriate planning consideration to the nature and concentration of receivables at Sun Capital. This was a gross deviation from GAAS because, as discussed above, the receivables were of vastly different natures and the collectability and timing of collectability of these receivables varied widely depending upon the type.

300. E&Y failed to plan its audit to determine the mix or nature of the receivables that collateralized the loans. Given that workers' compensation receivables and DSH payments were substantially different from typical healthcare receivables, as discussed above, E&Y's audit planning should have, but did not, take into consideration the differences in these receivables and the risks related to the character of these receivables.

301. E&Y failed to plan or implement any "subsequent events" procedures to evaluate the materially false and misleading January 2007 Confidential Offering Memorandum or its use to fraudulently maintain investments in Founding Partners and to deceive innocent Founding Partners' decision-makers by concealing the use of Founding Partners' loan proceeds and the true nature and value of the collateral securing those loans.

302. E&Y did nothing to evaluate the impact of the extremely high-risk advances from Sun Capital to Promise Healthcare hospitals or the collectability of the

funds lent to Sun Capital by Founding Partners' investors or transferred to related parties as unsecured loans or "advances." E&Y issued a clean audit opinion and did not require disclosure of this highly inappropriate use of Founding Partners' funds, and did not require any allowance/reserve for loan loss to account for the probability that the Founding Partners' loans to Sun Capital were uncollectible in whole or in material part.

303. E&Y failed to appropriately evaluate Founding Partners' ability to continue in operation as a going concern for a reasonable period of time as required by GAAS. An appropriate going concern analysis was critical in light of the rapidly deteriorating quality of the receivables factored by Sun Capital and Sun Capital's outright misuse of Founding Partners' funds.

1. E&Y Failed to Plan and Implement Audit Procedures Taking Into Account Material Weaknesses In Internal Control.

304. A company's internal controls are processes implemented by a company's management to provide reasonable assurances regarding reaching goals in operations, accuracy of financial reports and compliance with applicable laws and regulations. The SEC defines internal controls as: "a specific set of policies, procedures, and activities designed to meet an objective … Controls have unique characteristics – for example, they can be: automated or manual; reconciliations; segregation of duties; review and approval authorizations; safeguarding and accountability of assets; preventing or detecting error or fraud."

305. It is critical for auditors to understand and analyze a company's internal controls for purposes of planning the audits, assessing risks with various audit procedures and in performing the audits.

306. E&Y knew or should have known that there existed numerous material weaknesses in FPCM's and Founding Partners' internal controls, including but not limited to:

(a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;

(b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;

(c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

E&Y nonetheless did not properly notify Founding Partners of these material weaknesses as required by GAAS, and did not properly tailor or enhance its audit procedures to take into account these material weaknesses.

2. <u>E&Y Violated GAAS Standards of Field Work in Numerous Ways.</u>

307. In violation of GAAS, E&Y failed to maintain independence in mental attitude during the course of its audit due to its long and close relationship with Gunlicks, as described herein, and because of its relationship with Sun Capital and its desire to acquire new business from affiliates or entities related to Sun Capital as described herein.

308. In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of Stable-Value's loans to Sun Capital. E&Y merely confirmed the amount of the loans, and in violation of GAAS, merely assumed that the full amount was collectable.

309. In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of the receivables purchased by Sun Capital with Founding Partners' loan proceeds.

310. E&Y breached its professional duties in connection with the AUPs it performed on the receivables Sun Capital purchased by: (a) failing to advise Founding Partners that the procedures were grossly inadequate and were not useful for its audits; (b) negligently performing the procedures; and (c) negligently failing to integrate the procedures into the audit process. Indeed, E&Y adopted the procedures as its own and assumed full responsibility for them when it added to and deviated from the AUPs without executing new agreements.

311. In violation of GAAS, E&Y failed to design the AUPs it performed on the receivables Sun Capital purchased with Stable-Value loan proceeds to determine or evaluate the actual collectability and value of those receivables.

312. In its AUPs on the receivables Sun Capital purchased with Stable-Value's loan proceeds, E&Y merely confirmed on a sample basis the amount of the receivable and the fact that the amount was owed. But, E&Y did no analysis of the actual collectability of these receivables, in violation of GAAS.

313. In violation of GAAS, E&Y failed to plan or implement proper audit procedures to evaluate receivables Sun Capital purchased from Promise Healthcare or Success, both related parties, and failed to evaluate those transactions with heightened skepticism as required by GAAS.

314. In violation of GAAS, E&Y, in its evaluation of the receivables serving as collateral for the Founding Partners' loans, failed to make any distinction between the types of receivables factored by Sun Capital in the audit procedures that E&Y implemented. As a result, E&Y applied the same procedures to workers' compensation receivables as it did to DSH payments and to other healthcare receivables. This is a gross deviation from GAAS because these types of receivables are very different, as described above, both in the timing of their collectability and in the ability to collect the receivable, period.

315. E&Y failed to plan or implement appropriate audit procedures to determine whether Sun Capital's purchase of workers' compensation receivables and anticipated DSH payments was a violation of the SCHI Agreement and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

316. E&Y failed to plan or implement proper audit procedures to determine whether Sun Capital's loans to related parties, funded with Founding Partners' loan proceeds, were in violation of the SCHI Agreement or the SCI Agreement, and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

317. E&Y's AUPs on the receivables purchased by Sun Capital were inadequate because they failed to sample a sufficient number of receivables to obtain a reasonably accurate portrayal of the character and composition of Sun Capital's receivables portfolio.

B. <u>The Never-Completed 2007 Audit and Continuing Concealment of Sun Capital's Misuse of Founding Partners' Funds</u>.

1. <u>E&Y initially resigned as Founding Partners' auditor due to the extreme risk associated with the audit, but then decided to continue as auditor in order to attract business from Sun Capital-related companies</u>.

318. In June 2007, shortly after the issuance of its unqualified audit opinion on Stable-Value's 2006 financial statements, E&Y decided to resign from its audit relationship with Founding Partners.

319. According to E&Y's workpapers, its decision to resign as Founding Partners' auditor was based upon at least the following risk factors:

> I. Lack of audited financial statements for Sun Capital to help support the validity and valuation of the loans from the Stable-Value fund to Sun Capital in connection with the audit of the Stable-Value fund.
>
> II. Credit risk of the loans to Sun Capital which represent 88% of the assets of the Stable-Value fund at December 31, 2006.
>
> III. Concern regarding the adequacy of the procedures and controls over the valuation of investments in private companies which represent 52% of the investments held by the Equity Fund as of December 31, 2006.
>
> IV. An ongoing SEC investigation of Founding Partners and William Gunlicks which was initiated in 2000, resulted in the issuance of a "Wells Notice" in December 2003, and was still ongoing at the time of our decision to resign.

320. E&Y's decision to resign was also motivated by, on information and belief, the unacceptable risks posed by the concentration of Founding Partners' assets at Sun Capital and Sun Capital's misuse of those assets as described herein.

321. E&Y did not at any time inform Founding Partners of the true and material reasons for its decision to resign, including the reasons set forth in the preceding paragraphs.

322. E&Y apparently did not inform Gunlicks and FPCM of its decision to resign until November 2007.

323. Nonetheless, in early 2008, Paul Sallwasser, the E&Y partner in E&Y's Fort Lauderdale, Florida, office who had performed and led E&Y's audits and AUPs at Sun Capital, successfully lobbied partners in E&Y's professional practice group to allow E&Y, through its South Florida offices, to continue to audit the financial statements of Founding Partners, for fiscal year 2007.

324. Accordingly, E&Y was engaged to audit Stable-Value's financial statements for the year ended December 31, 2007.

325. Upon information and belief, William Shillington was the engagement partner and Zack Kraev was the manager for the 2007 audit.

326. E&Y's decision to continue auditing Stable-Value's financial statements for 2007 was motivated by its desire to foster and improve its relationship with and attract business from Sun Capital-related and affiliated entities.

327. Indeed, Sallwasser, in an E&Y memorandum dated January 3, 2008, in which he attempted to justify E&Y's continuance of its audit relationship with Founding

Partners, argued that the engagement would be profitable and specifically observed that "it is not likely that we would be appointed as the auditor of Promise [Healthcare] if we are not the auditor of the Funds and Sun Capital."

328. E&Y's motivation to attract business from Sun Capital-related parties seriously compromised E&Y's independence in the course of its audit of Founding Partners' financial statements, in violation of GAAS.

329. On or about February 5, 2008, FPCM and E&Y entered into an agreement pursuant to which the performance of the audits for the year ended December 31, 2007 were to be conducted.

330. Days later, on February 12, 2008, E&Y attempted to include a limitation on liability, which further seriously compromised E&Y's independence in violation of GAAS. Founding Partners' records do not reflect a counter-signed copy of the February 12, 2008 letter and, even if signed, the limitation of liability is unenforceable.

2. <u>E&Y's audit of Founding Partners 2007 financial statements was grossly deficient and intentionally prolonged so as to avoid issuance of an adverse audit opinion and restatement of Stable-Value's 2006 financial statements as required by GAAS and GAAP</u>.

331. E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 was conducted by E&Y's Fort Lauderdale, Florida office, and AUPs on Sun Capital's portfolio of factored receivables in connection with that audit were likewise conducted by E&Y's Fort Lauderdale office.

332. E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 dragged on for well over a year until Gunlicks fired E&Y in 2009, shortly before Founding Partners was placed in the current receivership.

333. E&Y delayed its audit work in order to avoid issuing an opinion on Stable-Value's financial statements as of December 31, 2007. It knew or should have known that Stable-Value's financial statements did not comport with GAAP.

(a) Stable-Value's 2007 Financial Statements Continued the Concealment of Sun Capital's Misuses of Stable-Value's Investors' Funds.

334. Drafts of Stable-Value's financial statements for the fiscal year ended December 31, 2007 are included in E&Y's workpapers.

335. The 2007 Stable-Value financial statements audited by E&Y contained similar misrepresentations, and were materially false and misleading for essentially the same reasons as the 2006 financial statements.

336. Stable-Value's 2007 financial statements audited by E&Y failed to reveal that substantially material amounts of the receivables factored by SCHI using Stable-Value funds consisted of DSH payments, workers' compensation receivables and receivables aged beyond 120 days, and those financial statements likewise failed to reveal substantial and material unsecured loans or "advances" from Sun Capital to related-party hospitals using Founding Partners' funds.

337. Unlike prior years' financial statements, certain of the draft 2007 Stable-Value financial statements do contain vague reference to workers' compensation receivables and the longer collection period for those receivables. However, the financial

statements contain no disclosure of the material amount of workers' compensation receivables being factored by Sun Capital or their ineligible nature.

338. The draft 2007 financial statements of Stable-Value also contain a disclosure that "[a]pproximately $218 million of the collateral is healthcare receivables that Sun Capital purchased from a group of twelve hospitals which are controlled by the owners of Sun Capital." Stable-Value's prior E&Y-audited financial statements contained no reference to Sun Capital's substantial and material purchases of healthcare receivables from related-party hospitals.

339. The draft 2007 financial statements of Stable-Value also contain no allowance or reserve for loan loss to reflect the risk of non-collectability of the Stable-Value loans to Sun Capital.

(b) <u>E&Y Intentionally Prolonged its Audit of Stable-Value's 2007 Financial Statements in Order to Conceal E&Y's Own Misconduct.</u>

340. E&Y did not issue a report or opinion on Stable-Value's 2007 financial statements.

341. E&Y prolonged its audit of Stable-Value's 2007 financial statements by requesting ever-increasing numbers of receivables to sample.

342. During its audit of Stable-Value's 2007 financial statements, E&Y again purported to perform AUPs on the collateral supposedly securing Stable-Value's loans to Sun Capital. E&Y issued an AUP report dated June 25, 2008, but without having performed procedures necessary to properly evaluate the collateral.

343. E&Y later insisted on increasing the sample size of receivables it sampled. E&Y did so ostensibly to get a more accurate picture of Sun Capital's portfolio of factored receivables. But this was merely a pretext in order to enable E&Y to significantly prolong the audit and delay issuance of an audit report and opinion. E&Y knew or should have known that the sample it initially requested from Sun Capital was grossly inadequate to enable E&Y to perform a GAAS audit of Stable-Value's financial statements or gain an accurate understanding of Sun Capital's portfolio of receivables.

344. E&Y was obligated by professional standards to issue a report and adverse opinion on Stable-Value's 2007 financial statements within a reasonable period of time.

345. E&Y's failure to issue an adverse audit opinion or disclaimer of an opinion, together with a going concern qualification, on Stable-Value's 2007 financial statements aided and gave substantial assistance to the continuing misconduct by Gunlicks, FPCM, and others.

346. E&Y knew that it was obligated by GAAS to issue an adverse opinion on Stable-Value's 2007 financial statements and to disclose all material facts that had been omitted from those financial statements. E&Y also knew that it was required by GAAS to issue a going-concern qualification on its audit opinion in which it revealed that substantial doubt existed as to Founding Partners' ability to continue in operation for a reasonable period of time.

347. E&Y also knew, during the course of its audit, or purported audit, of Stable-Value's 2007 financial statements, Stable-Value's E&Y-audited 2006 financial statements were grossly and materially misstated and misleading, and that GAAP and

GAAS required an immediate restatement of those financial statements. Yet in breach of the duties it owed to Founding Partners, E&Y required no such restatement and failed to disclose the need for any such restatement.

348. E&Y's failure and refusal to issue an audit report and opinion on Stable-Value's 2007 financial statements was motivated purely by E&Y's own pecuniary interests at the expense of Founding Partners. E&Y knew that its issuance of an adverse or qualified audit opinion on Stable-Value's 2007 financial statements would serve, at least in part, to highlight the false and misleading nature of Stable-Value's 2006 financial statements and E&Y's deficient audit of those financial statements, and would underscore the need to restate those financial statements. All of this would at least expose E&Y's grossly deficient audit of Stable-Value's 2006 financial statements.

349. In addition, E&Y was required, and had a continuing obligation pursuant to GAAS, to follow the procedures set forth in AU § 561, including insistence that FPCM and Gunlicks make appropriate disclosure of the facts demonstrating that the 2006 financial statements were materially misstated and misleading and should not be relied upon. If FPCM and Gunlicks refused to make such disclosures, AU § 561.08 required that E&Y:

(a) notify the client that E&Y's audit report must no longer be associated with the 2006 financial statements;

(b) notify regulatory agencies that E&Y's audit report on the 2006 financial statements should no longer be relied upon; and

(c) notify each person known to the auditor to be relying on the financial statements that his report should no longer be relied upon.

But E&Y failed to follow any of these procedures.

350. E&Y was thus willing to allow the loss of hundreds of millions of dollars of Founding Partners' investors' funds in order to avoid revealing its own audit failures and misrepresentations.

351. During the course of its audit work on Stable-Value's draft 2007 financial statement, E&Y knew that the quality of Stable-Value's portfolio of receivables continued to deteriorate.

352. Sun Capital's financial statements show that by February 2009, it held approximately $53 million of workers' compensation receivables. At recent rates of collection, these workers' compensation accounts receivable will not be fully collected for over 18 years (or until 2028), if ever.

353. As of February 2009, Sun Capital had at least $63 million in related-party unsecured loans to Promise Healthcare hospitals funded by assets received from Stable-Value. In addition, Sun Capital had outstanding a $450,000 unsecured loan, likewise funded with Stable-Value investor funds, to Sun Capital's CFO for the purchase of a house. These unsecured loans to related parties, and many others like them, constituted a substantial and material portion of the collateral securing Stable-Value's loans to Sun Capital.

354. As of February 2009, Sun Capital held approximately $158 million in DSH payments.

355. Moreover, Sun Capital's collateral report for December 31, 2008 indicates that approximately $136 million of Sun Capital's receivables, including workers' compensation and DSH payments, had been outstanding for more than 150 days, but were not replaced with "fresh" receivables. Furthermore, Sun Capital had approximately $40 million in additional workers' compensation receivables and anticipated DSH payments less than 120 days old, most of which by their very nature Sun Capital could not and would not likely collect within 150 days.

3. E&Y Performed a Grossly Deficient Audit of Stable-Value's 2007 Financial Statements.

356. During the course of its audit of Stable-Value's 2007 financial statements, E&Y knew or should have known that Sun Capital was incapable of servicing its debt to Stable-Value and was incapable of repaying the principal balances of Founding Partners' loans to Sun Capital. E&Y thus knew that Stable-Value's loans to Sun Capital were at extreme risk.

357. During the course of its audit of Founding Partners' 2007 financial statements, E&Y knew that the risk of Sun Capital defaulting on the Stable-Value loans was extreme.

358. During the course of its prolonged audit of Stable-Value's 2007 financial statements, E&Y also knew that there was and had been no disclosure of the substantial risks to which Founding Partners' funds were exposed due to the substantial deterioration of the quality of receivables being factored by Sun Capital and because of Sun Capital's outright misuse of Founding Partners' funds.

359. Indeed, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that there was no disclosure by Gunlicks, FPCM, or anyone else for that matter, that Stable-Value's 2006 financial statements were substantially and materially false and misleading.

360. Moreover, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that Gunlicks and FPCM were using the January 2007 Confidential Offering Memorandum, with its grossly and materially false and misleading representations, and with its use of E&Y's name to add credibility to the document, to conceal sun Capital's actual uses of Founding Partners' loan proceeds.

361. E&Y failed to properly tailor, enhance, or add audit procedures to take into account serious and material weaknesses in FPCM's and Founding Partners' internal controls, including at least the following:

(a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;

(b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;

(c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

362. Upon information and belief, E&Y failed to emphasize or critically analyze anticipated DSH payments in its analysis of the factored receivables and credit risk.

363. As in prior years, E&Y violated GAAS by failing to properly plan and implement audit procedures to evaluate the collectability of Stable-Value's loans to Sun Capital.

364. As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's need for an allowance or reserve for loan loss.

365. As in prior years, E&Y failed to adequately plan and perform its audit to properly evaluate and understand the value, including an analysis of collectability, of the collateral securing Stable-Value's loans to Sun Capital.

366. As in prior years, E&Y's procedures applied to receivables factored by Sun Capital at December 31, 2007 were inadequate to enable E&Y to evaluate the collectability of the receivables. This was in violation of GAAS.

367. As in prior years, E&Y failed to properly take into consideration the fact that material amounts of the receivables factored by Sun Capital with Stable-Value loan proceeds were receivables Sun Capital purchased from entities related to Sun Capital.

368. E&Y abandoned its professional skepticism and failed to properly plan and implement audit procedures to evaluate the collectability of DSH and workers compensation receivables.

369. E&Y failed to design or perform tests to focus specifically on the workers' compensation receivables or anticipated DSH payments. E&Y personnel were not versed with the unique and risky nature of workers' compensation receivables and DSH payments.

370. In its AUPs, performed in connection with the December 31, 2007 audit, E&Y erroneously double-counted accrued fees as collateral. E&Y advised Founding Partners of its error only after it learned the SEC was investigating Founding Partners in early 2009.

371. E&Y failed to properly take into consideration the fact that the hospitals that factored accounts receivable with SCHI were financially distressed or insolvent and thus collectability of certain receivables was significantly impaired.

372. E&Y failed to gain an understanding of Sun Capital's methods of valuing or monitoring the factored accounts receivable.

373. E&Y improperly relied upon accounts receivable confirmations from parties related to SCHI.

374. E&Y failed to properly evaluate and determine whether Sun Capital was using the proceeds of the loans from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and the SCI Agreement, and inconsistent with what was represented to investors in Stable-Value's financial statements and Stable-Value and Stable-Value II's Confidential Offering Memoranda and monthly performance reports.

375. E&Y failed to disclose that the Sun Capital entities were using loan proceeds from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and SCI Agreement, and inconsistent with what was presented to investors in Stable-Value's financial statements and Stable-Value and Stable-Value II's confidential offering memoranda and monthly performance reports.

376. As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's ability to continue in operation as a going concern for a reasonable period of time.

377. After E&Y was finally terminated in February 2009, it required Founding Partners to agree that its new auditor could only review the audit workpapers for use in preparing its 2007 and 2008 audits and that the new auditor could not serve as an expert witness against E&Y.

XVIII. E&Y AND MAYER BROWN MADE AFFIRMATIVE MISREPRESENTATIONS TO FOUNDING PARTNERS' LIMITED PARTNERS AND OTHER INNOCENT DECISION-MAKERS.

378. The "Agreement of Limited Partnership" of Stable-Value, which as alleged above, E&Y was required to read and understand pursuant to GAAS, specifically provided that the limited partners would be provided financial statements "audited by the partnership's independent certified public accountants" written one hundred twenty (120) days after the end of each fiscal year. Stable-Value's confidential offering memoranda similarly represented that investors would be provided audited financial statements within one hundred twenty (120) days of the end of each fiscal year. E&Y and Mayer Brown thus knew that Founding Partners audit opinions were being supplied to the limited partners and other innocent decision-makers of Founding Partners.

379. E&Y and Mayer Brown were aware that the majority of Founding Partners' collective assets were inextricably tied to the factoring of accounts receivable by the Sun Capital entities.

380. E&Y's report on Stable-Value's 2006 financial statements is dated May 23, 2007, and is addressed to "The Partners" of Stable-Value. In its audit report, E&Y made numerous misrepresentations.

381. E&Y's reports on Stable-Value's 2004 and 2005 financial statements are dated June 6, 2005, and June 23, 2006, respectively, and are addressed to "The Partners" of Stable-Value. In its audit reports, E&Y also made numerous misrepresentations substantially similar to those in its report on Stable-Value's 2006 financial statements.

382. In its audit reports, E&Y represented that it was an "independent" auditor of the financial statements. This representation was false and materially misleading.

383. In fact, E&Y was not independent and had compromised its independence in numerous ways, including at least the following: (a) E&Y's professional skepticism and independence were compromised by its long relationship with Sun Capital and, as alleged below, its desire to attract business from Sun Capital and related and affiliated entities; and (b) E&Y had a long personal relationship with Gunlicks, having provided at least tax services to him and his family for nearly 25 years.

384. In its reports, E&Y represented that "[w]e conducted our audit in accordance with auditing standards generally accepted in the United States." This representation was false and materially misleading.

385. As alleged herein, E&Y did not conduct GAAS audits of Stable-Value's financial statements. Indeed, as alleged herein, E&Y was guilty of gross deviations from basic GAAS.

386. E&Y further specifically represented that "[w]e believe that our audit provides a reasonable basis for our opinion." This representation was false and materially misleading. E&Y's audits were so deficient and so substantially deviated from the requirements of professional auditing standards that no reasonable auditor could believe that the audit provided any reasonable basis for an opinion on the financial statements of Stable-Value.

387. In fact, as alleged above, E&Y documented in its own workpapers its actual knowledge that the financial statements of Stable-Value were grossly and materially misstated and misleading. E&Y thus had no basis for issuing unqualified audit opinions on those financial statements.

388. E&Y further represented in its audit report on Stable-Value's 2006 financial statements that:

> In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Founding Partners Stable-Value Fund, L.P. at December 31, 2006 and the results of its operations, the changes in its partners' capital, and its cashflows for the year then ended in conformity with U.S. generally accepted accounting principles.

E&Y's audit reports on Stable-Value's 2004 and 2005 financial statements contain a substantially similar representation that in E&Y's opinion, the financial statements conformed with U.S. GAAP. These representations were false and materially misleading. As alleged above, Stable-Value's 2004, 2005, and 2006 financial statements were grossly and materially misstated and misleading in numerous respects.

389. As documented in E&Y's workpapers, E&Y's calculated "Planning Materiality" for its audit of Stable-Value's 2006 financial statements was $2,867,000, with "Tolerable Error" of $1,433,000. The amount of Founding Partners' funds which Sun Capital improperly used to purchase workers' compensation receivables, DSH payments and to make unsecured loans or advances to entities related to Sun Capital, exceeds this materiality threshold by many magnitudes. In fact, E&Y knew that Sun Capital had improperly used at least $129.4 million (over 45 times E&Y's Planning Materiality) of the funds loaned to Sun Capital for these purposes. This amount was over half the purported $253.9 million fund value of the loans to Sun Capital outstanding at 31 December 2006 as reported in Stable-Value's 2006 E&Y-audited financial statements.

390. As discussed above, E&Y actually knew and understood that Stable-Value's 2006 financial statements were grossly and materially misleading.

391. In the alternative, E&Y acted recklessly and consciously avoided knowing that Stable-Value's 2006 financial statements were materially misleading and misstated.

392. GAAS required E&Y to include in its audit reports a "going concern" qualification indicating that substantial doubt existed as to Founding Partners' ability to continue in operation for a reasonable amount of time. But E&Y failed to include any such qualification in its audit reports, thus further concealing Sun Capital's misuse of Founding Partners' funds and the undisclosed substantial risks to which those funds were exposed.

393. By failing to disclose or require disclosure of the material facts of the dramatic deterioration in the quality of the collateral used to secure loans to SCHI and

Sun Capital's outright misuse of Founding Partners' investor funds exposed investor funds to substantial and material risk of loss, E&Y and Mayer Brown concealed the breaches of duty of FPCM, Gunlick, Sun Capital, and others; Mayer Brown failed to act when required to do so by virtue of its professional obligations to Founding Partners; E&Y failed to act when required to do so by virtue of its audit engagement and by virtue of the provisions of GAAS and GAAP.

XIX. INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS REASONABLY RELIED ON THE MATERIAL MISREPRESENTATIONS AND OMISSIONS MADE TO THEM, INCLUDING E&Y'S UNQUALIFIED AUDIT OPINIONS, AND E&Y'S AND MAYER BROWN'S SILENCE IN THE FACE OF AN AFFIRMATIVE DUTY TO SPEAK.

394. Investors and limited partners of Founding Partners, including the Assignors, reasonably relied on the representations and omissions contained in the offering materials, including without limitation the Offering Memoranda and financial statements, and based their decisions to invest and to continue their investments on those representations and omissions. The materials relied upon by the investors and limited partners reflected the current materials available at the time of their respective investments in Founding Partners. The investors and limited partners were unaware that representations and omissions in the materials and information provided to them at the time were materially false and misleading.

395. Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners relied on E&Y's unqualified audit opinions on Founding Partners' financial statements in refraining from taking appropriate and timely action to

protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

396. Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners also relied on E&Y's and Mayer Brown's silence when E&Y and Mayer Brown were affirmatively obligated, as described above, to inform those innocent decision-makers that Founding Partners' financial statements were materially false and misleading; that E&Y's audit opinions should not be relied upon, and of the true facts regarding Sun Capital's use of Founding Partners' funds, including but not limited to the true character and composition of Sun Capital's portfolio of receivables serving as collateral for Founding Partners' loans. In reliance upon such silence, the innocent decision-makers refrained from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

397. It was reasonably foreseeable to E&Y and Mayer Brown that limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners would rely upon E&Y and Mayer Brown in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital, and that as a result of such reliance, Founding Partners' assets would be lost.

XX. THE ASSIGNORS WERE DAMAGED AS A RESULT OF THEIR REASONABLE RELIANCE UPON THE MATERIAL MISREPRESENTATIONS AND OMISSIONS IN THE OFFERING MATERIALS, AUDITED FINANCIAL STATEMENTS, DISCLOSURE BROCHURES, AND OTHER DOCUMENTS PREPARED BY OR WITH THE ASSISTANCE OF ERNST & YOUNG AND MAYER BROWN

398. As discussed above, Plaintiff is the Assignee of claims from individual assignors who invested in the Founding Partners Funds. As shown below, each assignor received, read and relied upon various documents prepared and sent to them by Founding Partners and by Defendants, including material misrepresentations and omissions. Each of the assignors was injured, in an amount to be proved at trial, as a direct and proximate result of its reasonable reliance upon such material misrepresentations and omissions.

399. Each assignor provided an unconditional assignment of its claims against E&Y and Mayer Brown to the Receiver, and any proceeds from the prosecution of those claims are for the benefit of the receivership.

A. E&Y And Mayer Brown Prepared And Knowingly Assisted With The Preparation Of False And Misleading Documents, Knowing They Would Be Sent To And Relied Upon By Investors

400. The Stable-Value offering materials (including the Stable-Value 1996 Confidential Offering Memorandum, and June 2000 and May 2002 Confidential Supplements to the Offering Memorandum) were sent to all prospective investors in Stable-Value Fund prior to the investment. Mayer Brown prepared both Supplements.

401. Founding Partners Disclosure Brochure Form ADV Part II was sent to all prospective investors in Stable-Value Fund and Stable-Value Fund II prior to the

investment. Mayer Brown reviewed and assisted in the drafting of the Disclosure Brochures.

402. Founding Partners 2003 Update Memorandum, including the 2004 Founding Partners 2004 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value on 15 April 2004, and the 2004 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 April 2004 to 31 December 2004. Mayer Brown reviewed and assisted in the drafting of the document.

403. Stable-Value 2003 Audited Financial Statements were sent to all Stable-Value investors on 9 August 2004. E&Y audited the financial statements.

404. Founding Partners 2004 Update Memorandum Including the Founding Partners 2005 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value on 23 March 2005, and the 2005 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2005 to 31 December 2005. Mayer Brown reviewed and assisted in the drafting of the document. Upon information and belief, Mayer Brown reviewed all such company disclosures before they were sent out.

405. Stable-Value 2004 Audited Financial Statements were sent to all investors in Stable-Value no later than October 2005. E&Y audited the financial statements.

406. Founding Partners 2005 Update Memorandum, including the Founding Partners 2006 Disclosure Brochure Form ADV Part II, was sent to all investors in Stable-Value in April 2006, and the 2006 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2006 to 31 December 2006. Upon information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

407. Upon information and belief, Stable-Value 2005 Audited Financial Statements (signed 6/23/06) were sent to all investors in Stable-Value no later than July 2006. E&Y audited the financial statements.

408. Stable-Value II Confidential Offering Memorandum was sent to all potential investors in Stable-Value II prior to the investment. Mayer Brown drafted the Stable-Value II Offering Memorandum.

409. Founding Partners 2006 Update Memorandum including the Founding Partners 2007 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value in May 2007, and the 2007 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2007 to 31 December 2007. Upon information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

410. Upon information and belief, Stable-Value 2006 Audited Financial Statements were sent to all Stable-Value investors in June 2007. E&Y audited the financial statements.

411. SEC Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, and Cover Letter were mailed to investors in all of the Founding Partners Funds on 3 January 2008, and were mailed to all potential investors in the Founding Partners Funds until 31 December 2008. Mayer Brown negotiated the terms of the Corrected Order, and drafted the Cover Letter.

412. 2007 Update Memorandum including 2008 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value in April 2008, and the 2008 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January

2008 to 31 December 2008. Upon information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

413. The documents above were sent to investors and potential investors to inform the current and prospective investors about the material aspects of their investment in the Founding Partners Funds, and with the intent that they would rely upon the material representations in the documents.

B. The Documents Prepared by E&Y And Mayer Brown And Sent To The Assignors Contained Material Misrepresentations And Omissions

414. The Stable-Value 1996 Confidential Offering Memorandum and Confidential Supplements represented

> "Under a credit and security agreement (the "Credit and Security Agreement") to be entered into between the Partnership and Sun Capital Healthcare, Inc. (the "Borrower"), the Partnership will make loans ("Loans") to the Borrower. Pursuant to the Credit and Security Agreement, the Borrower agrees to use the proceeds of the Loans to finance the Borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic or other health care related goods or services (such receivables being referred to collectively as "Health Care Receivables") payable by third parties (the "Third Party Payors") such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid. Pursuant to the Credit and Security Agreement, Loan proceeds that have not been used by the Borrower to acquire Health Care Receivables are to be held in a bank account (the "Holding Account") until they are used to acquire Health Care Receivables or to make payments to the Partnership."

415. In addition, the Stable-Value Offering Memo and Supplements represented that Stable-Value would make loans only "to the Borrower under the Credit and Security Agreement based on what are reported to be the Net Collectible Amounts of Eligible

Receivables…" and that Eligible Receivables were those that satisfied criteria "including that fewer than one hundred twenty (120) days have passed since the date on which the applicable services were provided by the applicable Seller to the applicable patient."

416. These representations were false, because, as described in Section X and XII(A) and XII(A) above, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the represented short-term "Eligible Receivables," because (as described above) they take substantially longer to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. DSH payments were also materially different than the short-term "Eligible Receivables" described in the offering memorandum, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement and were materially different than the short-term "Eligible Receivables" represented in the Offering Memorandum and Supplements, because they were a high risk use of Stable-Value funds and were not secured by receivables at all.

417. The Founding Partners Disclosure Brochure Form ADV Part II dated 1 April 2004 represented

> The Stable-Value Fund's objective is to employ an investment strategy that has low to no correlation to the equity and bond markets. The Stable-Value Fund's assets, through a security investment in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible healthcare receivables that are the payment obligation of investment grade U.S. insurance companies, such as, Blue Cross/Shield plans and U.S. government healthcare agencies, like Medicare and Medicaid. The Fund may also finance the purchase, at a discount, of certain pre-qualified and verified commercial receivables, which are the payment obligations of US companies and US government entities. Default insurance is provided on the non-US government receivables by the largest credit insurer, rated A++ by A.M. Best, of commercial trade receivables. The loans are secured through enforceable UCC-1 filings (liens) on all receivables.

418. The Disclosure Brochure Form ADV Part II encouraged investors to look to the Confidential Offering Memorandums of the relevant funds for disclosure of "possibilities for conflict of interest and inherent risks, which are necessary to make an informed decision by the advisory client."

419. These representations were false and misleading, for the same reasons the representations in the Stable-Value Offering Memo and Supplements (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible healthcare receivables" as represented in

the Disclosure Brochure and Offering Memorandum and Supplements, because they take substantially longer to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. DSH payments were also materially different than the short-term "eligible healthcare receivables" described in the Disclosure Brochure and Offering Memorandum, because they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital ends up in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement, and were materially different than the short-term "eligible healthcare receivables" represented in the Disclosure Brochure and Offering Memorandum, because they were a high risk use of Stable-Value funds and were not secured by receivables at all, as was represented in the Disclosure Brochure, Offering Memorandum and Supplements.

420. The 2003 audited financial statements represented that:

> "Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers."

421. The 2003 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying

healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

422. Regarding the SEC investigation, the 2003 Audited Financials represented that "[t]he General Partner and the Staff are discussing a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

423. These representations were false and misleading, because (as described in Section X and XII(A) above) starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts

receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

424. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws.

425. The Founding Partners 2004 Update Memorandum including the Founding Partners 2005 Disclosure Brochure Form ADV Part II represented:

> The Stable-Value Fund's investment objective is to achieve above-average rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value

> investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans or U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation requirements, as described in the Stable-Value Fund's Offering Memorandum.

426. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on

average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

427. The Stable-Value 2004 Audited Financial Statements represented

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

428. The 2004 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

429. Regarding the SEC investigation, the 2004 Audited Financials represented that "[t]he General Partner and the Staff are discussing a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign

Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

430. In addition, the 2004 Audited Financials represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

431. These representations were materially false, because (as described in Section X and XII(A) above) starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts

receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

432. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

433. Founding Partners 2005 Update Memorandum including the Founding Partners 2006 Disclosure Brochure Form ADV Part II represented, like the 2005 Disclosure Brochure, that

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influence by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund's Offering Memorandum.

434. In addition, the 2006 Disclosure Brochure encouraged limited partners and investors to refer to the offering memorandums of the funds "[f]or more information on the overall investment strategies, terms, risk factors and fee structure…."

435. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables.

Workers compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

436. The Stable-Value 2005 Audited Financial Statements represented:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue

> Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

437. The 2005 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

438. Regarding the SEC investigation, the 2005 Audited Financials represented that "[t]he General Partner and the Staff have discussed a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

439. In addition, the 2005 Audited Financials represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

440. These representations were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables.

Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

441. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and

misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

442. The Stable-Value Fund II Confidential Offering Memorandum represented:

> Pursuant to the Credit Agreement, the Borrower agrees to use the proceeds of the Loans to finance the borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic, or other healthcare related goods or services (such receivables being referred to collectively as "healthcare receivables") payable by third-parties such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid ("third-party payors"). Pursuant to the Credit Agreement, Loan proceeds that have not been used by the borrower to acquire Healthcare Receivables are to be held in a bank account (the "holding account") until they are used to acquire Healthcare Receivables or to make payments to the partnership.

443. In addition, the Stable-Value II Offering Memorandum represented that the primary business of the fund would be making loans to SCHI secured by eligible healthcare receivables that met certain criteria including the age of the receivables.

444. These representations were false and misleading, because (as described in Section X and XII(A) and (C) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were

not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X and XII(A) and (C)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

445. The Founding Partners 2006 Update Memorandum including the Founding Partners 2007 Disclosure Brochure Form ADV Part II represented, like the 2006 Disclosure Brochure, that

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund's Offering Memorandum. The Stable-Value Fund does not employ leverage.

446. Similarly, with regard to Stable-Value II, the Disclosure Brochure represented that

> The Stable-Value Fund II's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund II is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund II's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare

> and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund II's Offering Memorandum. Leverage may be employed up to a 1 to 1 ration to enhance the absolute return.

447. In addition, the 2007 Disclosure Brochure encouraged limited partners and investors to refer to the offering memorandums of the funds "[f]or more information on the overall investment strategies, terms, risk factors and fee structure…."

448. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on

average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

449. The Stable-Value 2006 Audited Financial Statements represented

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

450. In addition, the Audited Financials represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

451. Furthermore, with respect to the SEC investigation, the Audited Financials represented that "[t]he General Partner and the Staff have discussed a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign

Assurance company, Limited ("Sovereign Assurance") and the relationships involving the Company."

452. As to the proposed settlement with the SEC, the Audited Financials also represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

453. These representations were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average

to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

454. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were otherwise in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

455. The Cover Letter represented to the limited partners and investors that the SEC investigation was "successfully resolved."

456. That representation was false, because Mayer Brown had only succeeded in delaying the discovery of the fraud by concealing it from the SEC and by failing to disclose to the SEC and to the Funds and their investors the truth about the use of the funds, which allowed the fraud to continue and the damages resulting from the fraud to increase.

457. The representation in the Cover Letter was also misleading because it omitted material information regarding the actual scope of and concerns expressed in the SEC's investigation, including the SEC's concerns about the misuse and misrepresentations concerning the actual uses of the funds, omitted any disclosure of the true facts concerning the misuse and misrepresentations about the uses of the investors' funds, and represented that Founding Partners was in compliance with federal laws and that the Offering Materials and other information provided to investors properly represented the Founding Partners loans and collateral.

458. The representation in the Cover Letter was also false and misleading because, when read together with the Corrected Order, it suggested that the true facts relating to the issues of concern to the SEC had been disclosed to the SEC and resolved by the Corrected Order.

C. <u>The Assignors Were Injured As A Proximate Result Of Their Reasonable Reliance On The Material Misrepresentations And Omissions</u>

459. Harrison Family Investments, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Harrison Family Investments, L.P. initially invested in Stable-Value Fund II, L.P. on 1 March 2008, and made a subsequent investment on 1 August 2008.

460. Prior to its initial investment in Stable-Value Fund II, Harrison Family Investments, LP and/or its representative (Clanton Harrison) received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Harrison Family Investments and its representative (Clanton Harrison) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

461. Prior to its subsequent investment on 1 August 2008, Harrison Family Investments and its representative (Clanton Harrison) also received, read and reasonably relied upon the material representations in the monthly account statements, and Stable-Value II performance reports. At all relevant times, Harrison Family Investments and its representative (Clanton Harrison) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

462. Clanton Harrison III IRA is the retirement account for Clanton B. Harrison III, an individual who resides in Texas. Clanton Harrison III IRA invested in Stable Value Fund II, L.P. on 1 August 2008.

463. Prior to his initial investment in Stable-Value Fund II, Clanton Harrison received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and Stable-Value II Performance Reports. At all relevant times, Harrison Family Investments and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

464. Leslie T. Merrick Investment Trust is an entity organized under the laws of Texas with its principal place of business in Texas. The Leslie T. Merrick Investment Trust invested in Stable-Value Fund, L.P. with an initial investment date on 1 August 2004.

465. Prior to its initial investment Leslie T. Merrick Investment Trust and/or its representative (Leslie Merrick) received, read and reasonable relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the Leslie T. Merrick Investment Trust and its representative (Leslie Merrick) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

466. Chris Dance is an individual who resides in the state of Texas, and was counsel to Mt. Vernon. Mr. Dance initially invested in the Stable-Value Fund, L.P. on 2 August 2004, and subsequently invested on 1 February 2005. On 1 April 2007, Mr. Dance converted his entire limited partnership interest in Stable-Value to Stable-Value Fund II, L.P. Mr. Dance made a subsequent investment in Stable-Value Fund II on 5 September 2007.

467. Prior to his initial investment in Stable-Value Fund, Mr. Dance and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

468. Prior to his Prior to his subsequent investment on 1 February 2005, Mr. Dance and/or his representatives also received, read and reasonably relied upon the representations in the Stable-Value performance reports, monthly account statements, 2004 Stable-Value Update Memorandum, and the 2003 Stable-Value Audited Financial Statements. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

469. Prior to converting his interest in Stable-Value Fund to Stable-Value Fund II in April 2007, Mr. Dance and/or his representative also received, read and reasonably relied upon the Stable-Value Fund II Confidential Offering Memorandum and Limited Partnership Agreement, the Stable-Value Fund 2004 and 2005 Audited Financial Statements. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

470. Prior to his subsequent investment in Stable-Value Fund II in September 2007, Mr. Dance and/or his representative also received, read and reasonably relied upon the material representations monthly account statements and performance reports. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

471. Kenny Allan Troutt Descendants Trust is an entity organized under the laws of Texas with its principal place of business in Texas. Kenny Allan Troutt Descendants Trust initially invested in Stable-Value Fund on 1 August 2004, and made subsequent investments on 1 November 2004, 1 April 2005, 3 October 2005, 3 March 2006, 16 March 2006, 21 May 2007, and 1 March 2008.

472. Prior to its initial investment, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) received, read and reasonably relied upon the material misrepresentations in Stable-Value Limited Partnership Agreement, Marketing Packet, Confidential Offering

Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

473. Prior to all subsequent investments, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) received, read and reasonably relied upon the material misrepresentations in Stable-Value performance reports. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

474. Prior to its subsequent investments in November 2004 and April 2005, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2003 Audited Financial Statements, and the Stable-Value Update Memorandum for the year ending 2003. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

475. Prior to its subsequent investments in October 2005 and March 2006, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

476. Prior to its subsequent investments in May 2007, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the 2005 and 2006 Stable-Value Update Memorandums, and a draft of the Stable-Value 2006 Financial Statements. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

477. Prior to its subsequent investments in March 2008, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2006 Audited Financial Statements. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the

representations were materially false and misleading, and of the truth of the material facts omitted.

478. Double S Partners is an entity organized under the laws of Texas with its principal place of business in Texas. Double S Partners invested in Stable-Value Fund, L.P., with an initial investment date on 1 September 2006, and a subsequent investment on 1 April 2008.

479. Prior to its initial investment Double S Partners and/or its representative (Kerri Scott) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Double S. Partners and its representative (Kerri Scott) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

480. Prior to its subsequent investment in April 2008, Double S Partners and/or its representative (Kerri Scott) also received, read and reasonably relied upon the material representations in the Stable-Value monthly account statements, performance reports, the Stable-Value 2006 audited financial statements, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and the 2006 Stable Value Update Memorandum. At all relevant times, Double S. Partners and its representative (Kerri Scott) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

481. John Miller is an individual who resides in Indiana. Mr. Miller initially invested in Stable-Value on 1 August 2006, and then made additional investments on 1 March 2007, 1 January 2008, 1 March 2008, and 1 August 2008.

482. Prior to his initial investment in Stable-Value, Mr. Miller and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

483. Prior to his additional investment on 1 March 2007, Mr. Miller and/or his representative received, read and reasonably relied upon the material representations in the monthly account statements, and performance reports. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

484. Prior to his additional investments on 1 January 2008, 1 March 2008, and 1 August 2008, Mr. Miller and/or his representative also received, read and reasonably relied upon the material representations in the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, Stable-Value monthly account statements, performance reports, 2006 Stable-Value Update Memorandum, and the Stable-Value 2006 Audited Financial Statements. At all relevant

times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

485. Mr. Miller converted his entire investment from Stable-Value to Stable-Value II on 1 October 2008. In deciding to convert his investment to Stable-Value II, Mr. Miller and his representative also received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value II Confidential Offering Memorandum, the Stable-Value II Limited Partnership Agreement, the Stable-Value monthly account statements and performance reports, the 2007 Stable-Value Update Memorandum, and the Stable-Value 2006 Audited Financial Statements. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

486. Vassar Point, LLC is an entity organized under the laws of Indiana with its principal place of business in Indiana. Vassar Point, LLC initially invested in Stable-Value on 6 October 2008.

487. Prior to investing in Stable-Value, Vassar Point, LLC and/or its representative (John Miller) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering

Memorandum, the Stable-Value performance reports, the 2006 Stable-Value Audited Financial Statements, the 2006 and 2007 Stable-Value Update Memorandums, and the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Vassar Point, LLC and its representative (John Miller) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

488. Telesis IIR, L.P. is an entity organized under the laws of Delaware with its principal place of business in Utah. Telesis IIR invested in Stable-Value Fund, L.P. with an initial investment date of 1 August 2006, and subsequent investments on 1 December 2006, 1 January 2007, 19 November 2007, 1 January 2008, and 3 January 2008.

489. Prior to its initial investment, Telesis IIR and its representatives (including Jeffrey Clark and Michelle Jensen) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value performance reports, and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Telesis IIR and its representatives (including Jeffrey Clark and Michelle Jensen) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

490. Prior to all of its subsequent investments, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all

relevant times Telesis IIR and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

491. Prior to its subsequent investment in November 2007, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the Stable-Value 2006 draft financial statements, and the 2006 Stable-Value Update Memorandum. At all relevant times, Telesis IIR and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

492. Prior to its subsequent investments in 2008, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and the 2007 Stable-Value Update Memorandum. At all relevant times, Telesis IIR and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

493. Glen Gibson is an individual who resides in Texas. Mr. Gibson invested in Stable-Value Fund II, L.P. on 12 September 2008.

494. Prior to investing Mr. Gibson received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum. At all relevant times, Mr. Mann was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

495. Ron Mann, IRA is the individual retirement account of Ron Mann, an individual who resides in Texas. Mr. Mann invested in Stable-Value Fund II, L.P. on 1 June 2007.

496. Prior to his initial investment Mr. Mann and/or his representative (Gary Mann) received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement. At all relevant times, Mr. Mann was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

497. Walter E. Johnson is an individual who resides in Texas. Mr. Johnson made an initial investment in Stable-Value Fund, L.P. on 8 December 2006, and made a subsequent investment on 2 April 2007.

498. Prior to investing Mr. Johnson received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Johnson was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted. that the representations in the documents were false.

499. Prior to his subsequent investment, Mr. Johnson also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Mr. Johnson was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

500. TJNJH Investment Partnership is an entity organized under the laws of XXXX with its principal place of business in Wisconsin. TJNJH initially invested in Stable-Value Fund, L.P. on 31 July 1997, and made subsequent investments on 31 August 1997, 31 March 1998, 10 July 2000, 30 September 2000, 31 December 2000, 12 January 2001, 12 February 2001, 23 February 2001, 1 June 2001, 8 August 2001, 4 February 2002, 15 March 2002, 17 June 2002, 2 December 2002, 27 January 2003, 1 May 2006, and 1 January 2008.

501. Prior to its initial investment TJNJH and/or its representative (Thomas Joseph) received, read and reasonably relied upon the Stable-Value Offering Memorandum.

502. Prior to all subsequent investments, TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

503. Prior to its subsequent investment in July 2000, TJNJH and/or its representative (Thomas Joseph) received, read and reasonably relied upon the Stable-Value June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

504. Prior to its subsequent investments in June 2002, December 2002, and January 2003, TJNJH and or its representative (Thomas Joseph) received, read and

reasonably relied upon the Stable-Value May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

505. Prior to its subsequent investment in May 2006, TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 and 2004 Audited Financial Statements, and the Stable-Value 2003 through 2005 Fund Update Memorandums. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

506. Prior to its subsequent investment in January 2008 TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 and 2006 Audited Financial Statements, and the 2006 Stable-Value Update Memorandum At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

507. Kathleen A. Olberts Living Trust is an entity organized under the laws of California with its principal place of business in California. Kathleen A. Olberts originally invested in Stable-Value Fund in January 2001. On 16 January 2007, the entire Kathleen A. Olberts interest in Stable Value was converted to an interest under the Kathleen A. Olberts Living Trust.

508. At the time of her initial investment, Kathleen A. Olberts received, read and reasonably relied upon the material representations in the Stable-Value Offering Memorandum, and the Stable-Value June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, Kathleen A. Olberts and the Kathleen A. Olberts Living Trust were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

509. Prior to converting the investment to the Kathleen A. Olberts Living Trust, the Kathleen A. Olberts Living Trust and/or its representative (Kathleen A. Olberts) received, read and reasonably relied upon the material representations in the Stable-Value May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value 2002-2005 Audited Financial Statements, Stable-Value Performance Reports, and the Stable-Value 2004 and 2005 Update Memorandum. At all relevant times, Kathleen A. Olberts was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

510. Annandale Partners, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Annandale Partners initially invested 1 January 2007, and made subsequent investments 4 April 2007, 1 May 2007, and 1 July 2007, 9 November 2007, 11 July 2008.

511. Prior to investing in Stable-Value, Annandale Partners and/or its representatives (Christine Ashmore, George Seay, Jared Hohertz) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the

Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

512. Prior to all additional investments in Stable-Value, Annandale Partners and/or its representatives (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the Stable-Value performance reports. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

513. Prior to its additional investments from May 2007 and afterward, Annandale Partners and/or its representative (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the draft Stable-Value 2006 financial statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

514. Annandale Partners II, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Annandale Partners II initially invested 1 January 2007, and made subsequent investments on 1 May 2007, and 1 August 2007, 9

November 2007, 3 January 2008, 1 February 2008, 1 June 2008, 1 July 2008, and 1 August 2008.

515. Prior to investing in Stable-Value, Annandale Partners II and/or its representative (Christine Ashmore, George Seay, Jared Hohertz) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

516. Prior to its additional investments in Stable-Value, Annandale Partners and/or its representative (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the Stable-Value performance reports and the draft Stable-Value 2006 financial statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

517. J. Christopher Dance IRA is the individual retirement account of J. Christopher Dance. Mr. Dance is an individual who resides in Texas. The J. Christopher Dance IRA initially invested in Stable-Value Fund on 1 April 2007.

518. Prior to the investment in Stable-Value Fund, the J. Christopher Dance IRA and/or its representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value Performance Reports, Stable-Value 2003 to 2005 Audited Financial Statements, and the Stable-Value 2004 and 2005 Update Memorandums. At the time of its initial investment and at all relevant times thereafter, J. Christopher Dance IRA and/or its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

519. R. Michael Bales IRA is the individual retirement account of Michael Bales an individual who resides in Kentucky. Mr. Bales first invested in Stable-Value Fund, L.P. on 5 November 2001, and made subsequent investments on 16 April 2002, 6 February 2003, 7 May 2004, 7 June 2004, 12 January 2006, and 12 September 2007.

520. Prior to his initial investment Mr. Bales received, read and reasonably relied upon the representations Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, and the June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

521. Prior to all subsequent investments, Mr. Bales also received, read and reasonably relied upon the Stable-Value performance reports. At all relevant times, Mr.

Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

522. Prior to his subsequent investment in February 2003, Mr. Bales also received, read and reasonably relied upon the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

523. Prior to his investments in May and June of 2004, Mr. Bales also received, read and reasonably relied upon the Stable-Value update memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

524. Prior to his investment in January 2006, Mr. Bales also received, read and reasonably relied upon the material representations in the 2004 and 2005 Stable-Value Update Memorandum, the Stable-Value 2003 Audited Financial Statements, and the Stable-Value 2004 Audited Financial Statements. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

525. Prior to his investment in September 2007, Mr. Bales also received, read and reasonably relied upon the 2006 Stable-Value Update Memorandum, and the 2006 Stable-Value Audited Financial Statements. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

526. Clear Fir Partners, L.P. is an entity organized under the laws of Washington with its principal place of business in Washington. Clear Fir Partners, L.P. initially invested in Stable-Value Fund II, L.P. on 1 January 2008, and made subsequent investments on 1 February 2008, and 2 October 2008.

527. Prior to its initial investment in Stable-Value Fund II, Clear Fir Partners, L.P. and/or its representative (John Cunningham) received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and Stable-Value Disclosure Brochure. At all relevant times, Clear Fir Partners, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

528. Prior to subsequent investments, Clear Fir Partners and representatives also received, read and reasonably relied upon the monthly account statements. At all relevant times, Clear Fir Partners, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

529. John E Cunningham IV is an individual who resides in Washington state. John and his wife Carolyn A. Cunningham jointly invested in Stable-Value Fund II, L.P. on 1 September 2007.

530. Prior to their initial investment, John E. Cunningham, Carolyn Cunningham, and/or their representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the Stable Value disclosure brochure. At all relevant times,

John E. Cunningham, Carolyn Cunningham, and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

531. Carolyn A Cunningham is an individual who resides in Washington state. Carolyn and her husband John E. Cunningham jointly invested in Stable-Value Fund II, L.P. on 1 September 2007.

532. Prior to their initial investment, John E. Cunningham, Carolyn Cunningham, and or their representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the Stable Value disclosure brochure. At all relevant times, John E. Cunningham, Carolyn Cunningham, and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

533. Snyder Ranch, L.P. is an entity organized under the laws of Washington with its principal place of business in Washington. Snyder Ranch, L.P. initially invested in Stable-Value Fund II, L.P. on 3 April 2008.

534. Prior to its initial investment in Stable-Value Fund II, Snyder Ranch, L.P. and/or its representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement. At all relevant times, Snyder Ranch, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

535. Cunningham Children's Trust is an entity organized under the laws of Washington with its principal place of business in Washington. The Cunningham Children's Trust invested in the Stable-Value Fund II on 1 March 2008.

536. Prior to its initial investment, the Cunningham Children's Trust and their representatives received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, the Stable Value disclosure brochure, and the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, the Cunningham Children's Trust and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

537. Gary Sledge is an individual who resides in the state of Georgia. Gary Sledge invested in Stable-Value Fund, L.P. on 1 April 2008.

538. Prior to his initial investment Mr. Sledge and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value Performance Reports, Stable-Value Fund's 2006 Audited Financial Statements, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved, the SEC's Corrected Order Instituting

Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Gary Sledge and/or his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

539. Stiles A. Kellett, Jr. is an individual who resides in the state of Georgia. Stiles Kellett initially invested in Stable-Value Fund II, L.P. on 5 October 2007, and made subsequent investments on 11 February 2008, and 8 May 2008.

540. Prior to his initial investment Stiles Kellett and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value II Confidential Offering Memorandum, Limited Partnership Agreement, and marketing materials. At all relevant times, Stiles Kellett and his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

541. Prior to its subsequent investments Stiles Kellett and/or its representatives received, read and reasonably relied upon the material representations in the Stable-Value performance reports, Stable-Value Fund's 2006 Audited Financial Statements, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved. At all relevant times, Stiles Kellett and his representatives were

unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

542. Kellett Family Partners, LP is an entity organized under the laws of Georgia with its principal place of business in Georgia. Kellett Family Partners, L.P. invested in Stable-Value Fund II with an initial investment date of 1 October 2007, and subsequent investments on 1 February 2008, and 1 May 2008.

543. Prior to its initial investment, Kellett Family Partners and/or its representatives (Gary Sledge of Kellett Investment Corp. and Stiles A. Kellett) received, read and reasonably relied upon the material representations made in the Stable-Value II Confidential Offering Memorandum, Limited Partnership Agreement, and marketing materials. At all relevant times, Kellett Family Partners and/or its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

544. Prior to its subsequent investments Kellett Family Partners and/or its representatives (Gary Sledge of Kellett Investment Corp. and Stiles A. Kellett) received, read and reasonably relied upon the material representations in the Stable-Value performance reports, Stable-Value Fund's 2006 Audited Financial Statements, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved. At all relevant times, Kellett Family Partners and/or its

representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

545. Chariot Stable Asset Fund, LP is an entity organized under the laws of Delaware with its principal place of business in California. Chariot Stable Asset Fund invested in Stable-Value Fund, L.P. on 1 July 2005. The initial investment was funded with assets of Chariot Stable Asset Fund, and a rollover of Ahmos Hassan's investment in Stable-Value Fund, L.P. into the Chariot Stable Asset Fund limited partnership interest in Stable-Value Fund.

546. Mr. Hassan is an individual who resides in Michigan. Mr. Hassan is the president and owner of Chariot Management, Inc., the general partner of Chariot Stable Asset Fund, LP. Mr. Hassan originally invested in Stable-Value Fund, L.P. on 16 July 2003. On 1 July 2005, Mr. Hassan closed his limited partnership interest in Stable-Value Fund and converted it into an interest in Chariot Stable Asset Fund's limited partnership interest in Stable-Value Fund. Mr. Hassan is a representative of the general partner of Chariot Stable Asset Fund, L.P.

547. Chariot Stable Asset Fund made additional investments on 3 October 2005, 3 February 2006, 3 July 2006, 5 March 2007, 17 December 2007, 1 February 2008, and 5 January 2009.

548. Prior to its initial investment on 1 July 2005, Chariot Stable Asset Fund, L.P. and/or its representative (Mr. Hassan) received, read and reasonably relied upon the material representations in the Credit and Security Agreement with SCHI, the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April

1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, and Stable-Value Update Memorandum. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

549. Prior to its subsequent investments, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

550. Prior to its investments in 2006, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

551. Prior to its investment in March 2007, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 Audited Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the

representations were materially false and misleading, and of the truth of the material facts omitted.

552. Prior to its investments in December 2007, 1 February 2008, and 5 January 2009 Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the draft Stable-Value 2006 Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

553. MJA Innovative Income Fund, LP is an entity organized under the laws of Virginia with its principal place of business in Virginia. MJA initially invested in Stable-Value Fund, L.P. on 4 March 2008, and made a subsequent investment on 1 April 2008.

554. Prior to investing in Stable-Value, MJA and/or its representative William Pusey of JoycePayne Partners, MJA's investment advisor, received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and Stable-Value Update Memorandum. At all relevant times, MJA Innovative Income Fund, LP and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

555. Maxwell Halstead Partners LLC is an entity organized under the laws of Illinois with its principal place of business in Illinois. Maxwell Halstead Partners LLC made investments in Stable-Value Fund, L.P. with an initial investment date on 1 November 2004, and subsequent investments on 1 December 2004, 1 January 2005, 7 January 2005, 1 April 2005, 1 July 2005, 1 July 2006, and 1 March 2008.

556. Prior to its initial investment, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, and Stable-Value Update Memorandum. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

557. Prior to Maxwell Halstead Partners' subsequent investments in 2005, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

558. Prior to Maxwell Halstead Partners' subsequent investment in July 2006, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

559. Prior to Maxwell Halstead Partners' subsequent investment in March 2008, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 Audited Financial Statements, and draft 2006 financial statements. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

560. Haines All-Seasons Select Fund I, LLC is an entity organized under the laws of Alabama with its principal place of business in Alabama. Haines All-Seasons Select Fund I first invested in Stable-Value Fund on 1 April 2004, and made subsequent investments on 1 May 2004, 1 October 2004, 1 August 2007, and 1 March 2008.

561. Prior to its initial investment, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to

the Offering Memorandum. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

562. Prior to all subsequent investments, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

563. Prior to its subsequent investment in October 2004, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 Audited Financial Statements, and the Stable-Value year end 2003 Update Memorandum. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

564. Prior to its subsequent investments in August 2007 and March 2008, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 to 2006 Audited Financial Statements, and the 2005 and 2006 Stable-Value Update Memorandums. At all relevant times, Haines All-Seasons Select Fund I and its

representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

565. Haines All Seasons Select Fund II, LLC is an entity organized under the laws of Alabama with its principal place of business in Alabama. Haines All-Seasons Select Fund II first invested in Stable-Value Fund on 1 August 2004, and made subsequent investments on 1 February 2005, 1 April 2005, and 1 August 2007.

566. Prior to its initial investment in August 2004, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Stable-Value performance reports, 2003 Stable-Value Update Memorandum Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

567. Prior to all subsequent investments, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

568. Prior to its subsequent investments in February 2005 and April 2005, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 Audited Financial Statements. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

569. Prior to its subsequent investment in August 2007, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 to 2006 Audited Financial Statements, and the 2005 and 2006 Stable-Value Update Memorandums. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

570. Dakota Partners L.P. is an entity organized under the laws of Illinois with its principal place of business in Illinois. Dakota Partners made an initial investment in Stable Value on 4 December 2002, and subsequent additional investments on 1 March 2003, and 1 April 2005.

571. Prior to its initial investment, Dakota Partners L.P. and/or its representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002

Confidential Supplement to the Offering Memorandum. At all relevant times, Dakota Partners L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

572. Prior to its subsequent investment on 1 April 2005, Dakota Partners L.P. and/or its representative also received, read and reasonably relied upon the monthly account statements and Stable-Value monthly performance reports. At all relevant times, Dakota Partners L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

573. PP Partnership, L.P. is an entity organized under the laws of Illinois and has its principal place of business in Glencoe, Ill. PP Partnership, L.P. invested in Stable-Value, with its first investment on 1 January 2003, and a subsequent investment on 1 March 2004.

574. Prior to its initial investment, PP Partnership, L.P. and/or its representatives (Paul Sternberg, William Leavitt, and Lawrence Bober) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, PP Partnership, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

575. Prior to its subsequent investment in March 2004 PP Partnership, L.P. and/or its representative also received, read and reasonably relied upon its monthly

account statements, and performance reports. At all relevant times, PP Partnership, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

576. Rodger Sanders is an individual who resides in Texas. Mr. Sanders made an initial investment in Stable-Value fund on 1 May 2004.

577. Prior to his initial investment, Rodger Sanders and/or his representative (William Leavitt) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Sanders was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

578. Stuart Frankenthal is an individual who resides in Illinois. Mr. Frankenthal made an initial investment in Stable-Value on 1 May 2007.

579. Prior to his initial investment in Stable-Value, Mr. Frankenthal and/or his representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Frankenthal was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

580. J. Mark Lozier Revocable Trust is an entity organized under the laws of Illinois with its principal place of business in Illinois. The J. Mark Lozier Revocable Trust invested in Stable-Value Fund, L.P. on 1 March 2004.

581. Prior to its initial investment in Stable-Value Fund, the J. Mark Lozier Revocable Trust and/or its representatives (J. Mark Lozier and William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the J. Mark Lozier Revocable Trust and/or its representatives (J. Mark Lozier and William Leavitt) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

582. Four J Partnership, L.P. is an entity organized under the laws of Illinois with its principal place of business in Illinois. Four J Partnership invested in Stable-Value fund, with an initial investment on 1 July 2003, and subsequent investments on 1 April 2004, 1 November 2004, 1 April 2005, and 1 October 2005.

583. Prior to its initial investment Four J Partnership and/or its representatives (Gerald Sommers and William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the Four J. Partnership and its representatives were unaware that the

representations were materially false and misleading, and of the truth of the material facts omitted.

584. Prior to its subsequent investment on 1 April 2004, Four J Partnership and/or its representative received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

585. Prior to its subsequent investment on 1 November 2004, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

586. Prior to its subsequent investment on 1 April 2005, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

587. Prior to its subsequent investment on 1 October 2005, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

588. Paul Loeb is an individual who resides in Illinois. Mr. Loeb invested in Stable-Value Fund, L.P. with an initial investment date on 1 January 2004.

589. Prior to his initial investment, Mr. Loeb and/or his representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Loeb and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

COUNT I
PROFESSIONAL MALPRACTICE (E&Y)

590. Plaintiff realleges and incorporates the allegations above as though fully set forth herein.

591. As alleged in detail above, E&Y breached its professional duties to Founding Partners and acted negligently in numerous ways by, among other things:

(a) failing to properly plan its audits of Founding Partners' financial statements; (b) failing to gain a necessary understanding of the unique aspects of the Founding Partners' business, course of dealing and industry; (c) failing to properly perform GAAS audits; (d) failing to exercise professional skepticism during the audits and in performing certain Agreed-Upon Procedures; (e) failing to remain independent of Gunlicks and the Sun Capital entities; (f) failing to design adequate and necessary Agreed-Upon Procedures; (g) failing to evaluate the collectability of receivables serving as collateral for Stable-Value's loans; (h) failing to evaluate the collectability of Sun Capital's loans to related parties; (i) failing to evaluate whether Sun Capital's use of Founding Partners' loan proceeds was consistent with the SCHI Agreement, the SCI Agreement, or with what was being represented to the limited partners and other innocent decision-makers of Founding Partners; (j) failing to properly perform Agreed-Upon Procedures; (k) failing to properly staff its attest engagements; (l) failing to recognize and/or disclose and communicate material weaknesses in internal controls; (m) failing to evaluate the need for and to require or appropriate allowance or reserve for loan loss; and (n) issuing unqualified audit opinions on financial statements which E&Y knew or should have known were materially misstated and misleading.

592. As alleged in detail above, E&Y ignored numerous GAAS red flags, including, but not limited to: (a) Founding Partners' lack of or inadequate internal controls; (b) lack of any qualified personnel to value the receivables serving as collateral for the Founding Partners' loans; (c) extensive transactions with related parties by the Sun Capital entities; (d) the Sun Capital entities' lack of audited financial statements;

(e) Sun Capital's use of Stable-Value loan proceeds in manners inconsistent with what was represented in Stable-Value's financial statements; and (f) deviations from the SCI and SCHI Agreements.

593. E&Y also breached its duty of care because it was not independent based upon its years of providing tax accounting to Gunlicks and his family and its desire to obtain business from Sun Capital.

594. As the direct and proximate result of E&Y's breaches of duty, Founding Partners was damaged in an amount to be proved at trial.

COUNT II
NEGLIGENT MISREPRESENTATION (E&Y)

595. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

596. E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

597. E&Y also misrepresented to Founding Partners the true reasons why it originally resigned from the 2007 audit.

598. E&Y also repeatedly misrepresented to Founding Partners that it would timely complete the 2007 audit.

599. E&Y made these representations negligently and without a reasonable basis to believe their truth.

600. E&Y knew or should have known that E&Y's representations were false.

601. E&Y was obligated to disclose to Founding Partners the material information it failed to disclose as alleged herein.

602. E&Y reasonably foresaw and expected that limited partners and other innocent decision-makers would rely on E&Y's misrepresentations.

603. Limited partners and other innocent decision-makers of Founding Partners in fact relied upon E&Y's misrepresentations in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital. Such reliance was reasonable.

604. Founding Partners' reliance on E&Y's misrepresentations was reasonable and justifiable.

605. As a direct and proximate result of Founding Partners' reasonable reliance on E&Y's misrepresentations, Founding Partners (and the Assignors) sustained damages in an amount to be proved at trial.

COUNT III
FRAUD (E&Y)

606. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

607. E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

608. E&Y either knew at the time it made those misrepresentations that they were false or E&Y acted with reckless disregard for their truth or falsity.

609. E&Y reasonably foresaw, expected and intended that the limited partners and other innocent decision-makers at Founding Partners would rely on E&Y's representations contained in its audit report.

610. The limited partners and innocent decision-makers of Founding Partners in fact relied on E&Y's misrepresentations in refraining from taking action to protect Founding Partners' assets at Sun Capital despite Sun Capital's use of those assets in a manner inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

611. As alleged in detail above, E&Y concealed the truth regarding Sun Capital's use of Founding Partners' loan proceeds despite its knowledge of those facts, and despite its affirmative professional obligation to reveal those facts to the limited partners and other innocent decision-makers of Founding Partners and to advise them that they should not rely on Founding Partners' financial statements.

612. The limited partners and other innocent decision-makers of Founding Partners relied upon E&Y's silence in the face of its affirmative duty to speak in believing that Founding Partners' assets at Sun Capital were being used in a manner consistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

613. The limited partners and other innocent decision-makers of Founding Partners reasonably relied upon E&Y's silence in the face of a duty to speak in refraining from taking action to protect Founding Partners' assets at Sun Capital despite the fact that

those assets were, unbeknownst to them, in fact being used in manners inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners and that those assets were being exposed to extraordinary risk of loss. Such reliance was reasonable and justifiable.

614. As a direct and proximate result of E&Y's fraud, Founding Partners and the Assignors were damaged in an amount to be proved at trial.

COUNT IV
BREACH OF FIDUCIARY DUTY (E&Y)

615. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

616. As explained above, the facts alleged herein establish that E&Y owed fiduciary duties to Founding Partners (and the Assignors), including the duties of due care, loyalty, and full disclosure of all material facts.

617. E&Y breached its fiduciary duties that it owed to Founding Partners (and the Assignors) by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds, and by failing to reveal to Founding Partners the true reasons for its decision to resign from the Founding Partners' audit engagement as set forth herein.

618. E&Y further breached its fiduciary duties to Founding Partners (and the Assignors) by failing to disclose that the value of the collateral securing Stable-Value's

loans to Sun Capital was inadequate to cover any, or at most only a small portion, of the amount of the loans.

619. Founding Partners' (and the Assignors') damages were directly and proximately caused by E&Y's breaches of the fiduciary duties it owed to Founding Partners (and the Assignors).

COUNT V
AIDING AND ABETTING FRAUD (E&Y)

620. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

621. As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors including the Assignors and Founding Partners through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

622. FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

623. FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

624. The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was

using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

625. E&Y had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

626. E&Y gave substantial assistance to FPCM and Gunlicks' fraud by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

627. Founding Partners' (and the Assignors') damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT VI
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(E&Y)

628. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

629. FPCM owed Founding Partners and the Assignors fiduciary duties by virtue of its role as general partner of Founding Partners.

630. Gunlicks owed fiduciary duties to Founding Partners and the Assignors by virtue of his position as an officer and/or agent of FPCM and by virtue of his relationship of trust and confidence with the limited partners of the Funds.

631. As alleged above, Mayer Brown owed fiduciary duties to Founding Partners (and the Assignors) by virtue of the legal services it provided to Founding Partners.

632. As alleged in greater detail above, FPCM and Gunlicks breached their fiduciary duties by, among other things, issuing financial statements on behalf of Founding Partners that falsely represented that SCHI was using Founding Partners' loan proceeds to purchase healthcare receivables and that any healthcare receivables aged beyond 120-days were either removed or replaced.

633. As alleged in greater detail above, Gunlicks and Mayer Brown breached the fiduciary duties they owed to Founding Partners by, among other things, preparing and issuing confidential offering memoranda and other marketing materials that falsely represented to limited partners and investors that Founding Partners' loans to SCHI were fully secured with healthcare receivables and that any such healthcare receivables aged beyond 120-days were either removed or replaced.

634. By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y knew that FPCM and Gunlicks' authorization and/or approval of Sun Capital's use of Founding Partners' funds constituted breaches of the fiduciary duties that FPCM and Gunlicks owed to Founding Partners (and the Assignors).

635. By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y was aware of and understood that the misrepresentations in Founding Partners' financial statements and offering materials that Founding Partners' loans were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced constituted breaches of fiduciary duties owed to Founding Partners (and the Assignors) by FPCM, Gunlicks and Mayer Brown.

636. As alleged in greater detail above, E&Y substantially assisted in FPCM's and Mayer Brown's breaches of fiduciary duty by issuing unqualified audit opinions on Founding Partners' financial statements and by failing to disclose Sun Capital's use of Founding Partners' funds in a manner inconsistent with what was being represented to investors despite having a duty to do so pursuant to professional standards.

637. The damages suffered by Founding Partners (and the Assignors) were directly and proximately caused by the breaches of fiduciary duty described above.

COUNT VII
PROFESSIONAL MALPRACTICE (MAYER BROWN)

638. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

639. Mayer Brown is a law firm and, thus qualifies as a professional under Florida law.

640. Founding Partners was in privity with Mayer Brown, or at a minimum, was an intended third party beneficiary of Mayer Brown's legal services.

641. As counsel to Founding Partners, Mayer Brown owed Founding Partners a duty to advise and counsel them with the skill, knowledge, and experience of similarly situated counsel.

642. Mayer Brown also had the duty to comply with all professional regulations, including those rules regulating Florida, Illinois, and New York attorneys.

643. Mayer Brown breached its duties of loyalty and of due care to Founding Partners.

644. Mayer Brown's breach proximately caused damages to Founding Partners.

COUNT VIII
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(MAYER BROWN)

645. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

646. FPCM and Gunlicks owed fiduciary duties to the Founding Partners and the Assignors, including duties of due care, loyalty, and full disclosure of material facts.

647. The Founding Partners and the Assignors reposed their trust and confidence in FPCM and Gunlicks, and FPCM and Gunlicks accepted their trust and confidence.

648. Pursuant to their fiduciary duties, FPCM and Gunlicks owed the Founding Partners and the Assignors the duties to: (a) act loyally to and in the best interests of each of the Founding Partners; and (b) refrain from misrepresenting and/or omitting material facts.

649. FPCM and Gunlicks breached their fiduciary duties to the Founding Partners and the Assignors by, *inter alia*, failing to preserve assets, allowing events of

default to occur without responding appropriately to protect the Founding Partners' interests, misrepresenting and omitting material facts to limited partners, and failing to respond appropriately to protect the Founding Partners' interests in response to deviations from agreements and investment strategies represented to the Founding Partners and their limited partners and investors.

650. The misconduct of FPCM and Gunlicks alleged herein was completely and totally adverse to the interests of the Founding Partners, and the Founding Partners in no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein only resulted in the depletion and loss of the Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

651. Mayer Brown knew of FPCM's misconduct and of Gunlicks' misconduct, and knew that their misconduct constituted breaches of fiduciary duty to the Founding Partners.

652. Mayer Brown provided substantial assistance and/or encouragement to FPCM and to Gunlicks to act in breach of their duties to Founding Partners by: (a) knowingly drafting false statements and drafting statements that omitted material information in offering memoranda and/or supplements; (b) dissuading FPCM and Gunlicks from declaring defaults or exercising remedies; (c) advising FPCM and Gunlicks to continue conduct that Mayer Brown knew to be breaches of their fiduciary duties to Founding Partners; (d) forming a new entity to raise capital for the healthcare receivable program and enabling it to conduct business in Florida; (e) advising Founding Partners about disclosures in the Founding Partners Disclosure Brochure Form ADV Part

II that contained false statements and omissions, or incorporated false statements made in the offering memoranda; (f) upon information and belief, making false statements to the SEC that Founding Partners and Gunlicks had corrected any violations of federal securities laws and were not in violation of federal securities laws, including violations relating to the subjects of the SEC's concerns in the investigation, and; (g) drafting a letter to Founding Partners investors and potential investors regarding the settlement with the SEC that omitted material information and falsely represented that Founding Partners and Gunlicks were not violating federal securities laws.

653. Mayer Brown's misconduct also constituted a breach of their duties to non-clients under applicable law.

654. Mayer Brown was aware of its role as part of the tortious activity at the time it was providing substantial assistance to FPCM and to Gunlicks.

655. Mayer Brown knowingly and substantially assisted the principal violations being committed by FPCM and Gunlicks.

656. FPCM's and Gunlicks' wrongful acts proximately caused injury to Founding Partners.

657. Mayer Brown's conduct also proximately caused Founding Partners and the Assignors damages.

COUNT IX
AIDING AND ABETTING FRAUD (MAYER BROWN)

658. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

659. As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors, including the Assignors and Founding Partners through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

660. FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

661. FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

662. The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

663. Mayer Brown had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

664. Mayer Brown gave substantial assistance to FPCM and Gunlicks' fraud as alleged above with respect to the substantial assistance in breaches of fiduciary duty, both by preparing offering memoranda and/or supplements that affirmatively misrepresented

material facts to the limited partners and other innocent decision-makers, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

665. Founding Partners' and the Assignors' damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT X
AIDING AND ABETTING BREACHES OF STATUTORY DUTIES (E&Y AND MAYER BROWN)

666. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

667. By their conduct as alleged above, E&Y and Mayer Brown directly and indirectly, and with knowledge and intent to deceive or with reckless disregard for the truth, joined or materially aided in the solicitation, offer, and sale of limited partnership interests to Assignors by means of untrue statements of material fact, or omissions to state material facts necessary in order to make the statements made not misleading, in violation of the laws of the various states in which Assignors received and relied upon the untrue statements and omissions to their injury.

668. The Assignors relied on the misrepresentations and omissions in making their investment decisions, and in refraining from taking action to protect their investments and Founding Partners' assets. Such reliance was reasonable and justifiable.

669. As a direct and proximate result of the misrepresentations and omissions and of E&Y's and Mayer Brown's violations of the law, the Assignors were damaged in an amount to be proved at trial.

COUNT XI
FRAUD (MAYER BROWN)

670. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

671. As described above, Mayer Brown knew that Stable-Value loans were being diverted to fund the purchase of workers compensation receivables, DSH payments, and unsecured loans and advances for the purchase of hospitals and real estate.

672. Mayer Brown knew that these uses of Founding Partners assets were not disclosed in the Stable-Value or Stable-Value II Offering Memorandums or Supplements, financial statements, or other disclosures to the SEC or to the investors.

673. Mayer Brown knew that Founding Partners limited partners, investors, and innocent decision makers were reasonably relying on the representations in the Offering Memorandums, Supplements, financial statements and Disclosure Brochures.

674. With this knowledge, Mayer Brown drafted a Cover Letter that represented that the SEC's First Investigation was successfully resolved, knowing that the cover letter was going to be sent to the investors together with the SEC's Corrected Order.

675. Mayer Brown drafted the Cover Letter and sent the Cover Letter and the SEC's Corrected Order in the course of its business and for pecuniary gain.

676. Mayer Brown sent the Cover Letter and Corrected Order to all of Founding Partners' limited partners, investors and innocent decision-makers and knew that they would rely upon the representations and the omissions in the Cover Letter.

677. The Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

678. Mayer Brown knew or should have known that the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

679. Mayer Brown intended that the limited partners and innocent decision-makers would rely upon the materially misleading and fraudulent representations and omissions in the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors, and they reasonably did rely as intended, while they were ignorant of the true facts.

680. As a direct and proximate result of their justifiable reliance on Mayer Brown's misrepresentations and omissions, Founding Partners and the Assignors were damaged in an amount to be proved at trial.

COUNT XII
NEGLIGENT MISREPRESENTATION (MAYER BROWN)

681. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

682. As described above, Mayer Brown knew or should have known that Stable-Value loans were being diverted to fund the purchase of workers compensation receivables, DSH payments, and unsecured loans and advances for the purchase of hospitals and real estate.

683. Mayer Brown knew or should have known that these uses of Founding Partners assets were not disclosed in the Stable-Value or Stable-Value II Offering Memorandums or Supplements.

684. Mayer Brown knew or should have known that Founding Partners limited partners, investors, and innocent decision makers were reasonably relying on the representations in the Offering Memorandums, Supplements, and Disclosure Brochures.

685. Mayer Brown drafted a Cover Letter that represented that the SEC's First Investigation was successfully resolved that it knew was going to be sent along with the SEC's Corrected Order.

686. Mayer Brown drafted the Cover Letter and sent the Cover Letter and Corrected order in the course of its business and for pecuniary gain.

687. Mayer Brown sent the Cover Letter and Corrected Order to all of Founding Partners' limited partners, investors, and innocent decision-makers and knew that they would rely upon the representations and the omissions in the Cover Letter.

688. Mayer Brown intended, or reasonably foresaw and expected that limited partners and other innocent decision-makers would rely upon the Cover Letter and Corrected Order.

689. The Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

690. Mayer Brown made these representations negligently and without a reasonable basis to believe their truth.

691. Mayer Brown knew or should have known that the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above

692. Mayer Brown was obligated to disclose to Founding Partners, limited partners, and then existing potential investors the material information it failed to disclose as alleged herein.

693. Limited partners and other innocent decision-makers of Founding Partners in fact relied upon Mayer Brown's misrepresentations and omissions in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital. Such reliance was reasonable.

694. The limited partners' and innocent decision-makers' reliance on Mayer Brown's misrepresentations was reasonable and justifiable.

695. As a direct and proximate result of Mayer Brown's negligent misrepresentation, Founding Partners and the Assignors were damaged in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands entry of judgment against E&Y and Mayer Brown, awarding Plaintiff compensatory damages, prejudgment interest, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable as of right.

Respectfully submitted this ___ day of ____________, 2014.

By______________________________________

BEUS GILBERT PLLC
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EXHIBIT B

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

DANIEL S. NEWMAN, as RECEIVER for FOUNDING PARTNERS STABLE-VALUE FUND, LP; FOUNDING PARTNERS STABLE-VALUE FUND II, LP; FOUNDING PARTNERS GLOBAL FUND, LTD.; and FOUNDING PARTNERS HYBRID-VALUE FUND, L.P., Plaintiff,	**Case No. 10-49061**
vs.	
ERNST & YOUNG, LLP, a Delaware Limited Liability Partnership; and MAYER BROWN LLP, an Illinois Limited Liability Partnership, Defendants.	

~~SECOND~~THIRD AMENDED COMPLAINT

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COMPLAINT

Plaintiff DANIEL S. NEWMAN solely in his capacity as court-appointed Receiver for Founding Partners Stable-Value Fund, LP ("Stable-Value"); Founding Partners Stable-Value Fund II, LP ("Stable-Value II"); Founding Partners Global Fund, Ltd. ("Global Fund"); and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value Fund") (collectively, "Founding Partners"), for his Complaint against Defendants Ernst & Young, LLP ("E&Y") and Mayer Brown LLP ("Mayer Brown") alleges as follows:

I. PRELIMINARY STATEMENT.

1. Plaintiff brings this action against E&Y and Mayer Brown to recover damages for the over $550 million that was lost by the four funds constituting Founding Partners as a direct and proximate result of Defendants' misconduct as alleged herein. Plaintiff is also the assignee of claims assigned by (1) Harrison Family Investments LP; (2) Clanton Harrison IRA; (3) Leslie T. Merrick Investment Trust; (4) Chris Dance; (5) Kenny Allan Troutt Descendants Trust; (6) Double S Partners; (7) John Miller; (8) Vassar Point LLC; (9) Telesis IIR, L.P.; (10) Glen Gibson; (11) Ron Mann, IRA; (12) Walter E. Johnson; (13) TJNJH Investment Partnership; (14) Kathleen A. Olberts Living Trust; (15) Annandale Partners, LP; (16) Annandale Partners II, LP; (17) J. Christopher Dance IRA; (18) R. Michael Bales; (19) Clear Fir Partners, LP; (20) John E Cunningham IV; (21) Carolyn A Cunningham; (22) Sayden Ranch, LP; (23) Cunningham Children's Trust; (24) Gary Sledge; (25) Stiles A. ~~Kellet~~Kellett, Jr.; (26) Kellett Family Partners, LP; (27) Chariot Stable Asset Fund, LP; (28) MJA Innovative Income Fund, LP; (29) Maxwell Halstead Partners LLC; (30) Haines All Seasons Select Fund, LLC; (31) Haines All Seasons Select

Fund II, LLC; (32) Dakota Partners LLP; (33) PP Partnership LP; (34) Rodger Sanders; (35) Stuart Frankenthal; (36) J. Mark Lozier Revocable Trust; (37) Four J Partnership LP; and (38) Paul Loeb.

2. Through Stable-Value and later Stable-Value II, the Founding Partners' funds loaned hundreds of millions of dollars to two factoring companies who, according to Stable-Value's E&Y-audited financial statements, used the loan proceeds to purchase short-term (120-day), high-quality (primarily healthcare) receivables payable by the government or by insurance companies. Those receivables would then purportedly serve as collateral fully securing the Founding Partners' loans, and provide a stable, reliable source of income from which the factoring companies could make scheduled interest payments to Founding Partners.

3. The business of Stable-Value and Stable-Value II consisted almost exclusively of making loans of investors' money to these two factoring companies.

4. Unbeknownst to the limited partners and other innocent decision-makers of Founding Partners, the factoring companies used hundreds of millions of dollars of the loan proceeds to purchase receivables that were much riskier and for longer terms than those disclosed in the financial statements and to make unsecured loans or "advances" to entities related to the factoring companies.

5. E&Y knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not require any disclosure of these facts in either Stable-Value's or any of the other Founding Partners funds' financial statements. E&Y instead issued unqualified or "clean" audit opinions on those financial statements.

6. Mayer Brown also knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not disclose or require any disclosure of these facts to the limited partners and other innocent decision-makers of Founding Partners, and instead prepared disclosure documents that concealed the improper uses of Stable-Value loan proceeds and misrepresented the actual use of Stable-Value loan proceeds to the limited partners and other innocent decision-makers of Founding Partners.

7. The factoring companies' misuse of Stable-Value loan proceeds rendered the factoring companies incapable of repaying the loans resulting in substantial losses.

8. Stable-Value, Stable-Value II, and Hybrid-Value Fund are limited partnerships. Investors in each of those funds became limited partners pursuant to an agreement of limited partnership pertaining to each fund.

9. Global Fund is a Cayman Islands hedge fund with approximately 84% of its customers' assets invested in Stable-Value and Stable-Value II. A substantial portion of Hybrid-Value Fund assets were likewise invested in Stable-Value and Stable-Value II.

10. Founding Partners Capital Management Co. ("FPCM") is the general partner for Stable-Value, Stable-Value II, and Hybrid-Value Fund, and the investment manager for Global Fund.

11. Each of the Founding Partners' funds issued annual financial statements that were provided to the limited partners in the funds.

12. Founding Partners engaged E&Y to audit those financial statements for each of the years 2000 through 2007, and paid E&Y hundreds of thousands of dollars in fees for its audits. Global Fund was audited by E&Y's affiliated firm, E&Y Bermuda, although the

audit opinions (all unqualified or "clean") on Global Fund's financial statements were issued by the affiliated firm, E&Y Cayman Islands.

13. Founding Partners engaged Mayer Brown to represent Founding Partners, including without limitation with respect to the preparation and amendment of documents relating to transactions with the factoring companies, and the preparation of disclosure documents directed to the limited partners in the Founding Partners funds.

14. As described in detail herein, E&Y and Mayer Brown owed to Founding Partners and their limited partners numerous professional, fiduciary, contractual, and other duties.

15. The limited partners of Stable-Value and Stable-Value II were wholly innocent and unaware of the misconduct alleged herein.

16. In connection with its audits of the financial statements of Stable-Value, E&Y also audited the factoring companies who were the recipients of Stable-Value's loans of investor funds from 2002 through 2004. In connection with its 2005 and 2006 audits of Stable-Value, E&Y performed Agreed-Upon Procedures ("AUPs") on the factoring companies' portfolio of receivables serving as collateral for the Stable-Value loans. These audits and Agreed-Upon Procedures were performed by separate engagements with Founding Partners and the factoring companies.

17. E&Y knew at the times it performed its audit/Agreed-Upon Procedures work at the factoring companies, that FPCM and Founding Partners lacked the expertise and capability to value the receivables serving as collateral for the loans. The limited partners and other innocent decision-makers of FPCM and Founding Partners relied upon and

reposed trust and confidence in E&Y to perform procedures on the collateral portfolio sufficient to confirm the adequacy of the collateral and to advise Founding Partners of any inadequacy. E&Y thus owed fiduciary duties to Founding Partners and to their limited partners, including the duties of due care, loyalty, and full disclosure of all material facts.

18. As a result of its audits/Agreed-Upon Procedures at the factoring companies, E&Y knew that beginning in approximately 2003 the factoring companies began to misuse Founding Partners' loan proceeds by, among other things, purchasing receivables that were longer-term, less liquid, and much riskier in nature than what was represented to limited partners and investors in the financial statements. For example, the factoring companies began to use tens of millions of dollars of Stable-Value funds' money annually to purchase un-adjudicated workers compensation claims and other speculative forms of income which were not collectible (if they were collectible at all) for many years. In addition, the factoring companies began to misuse and misappropriate Stable-Value funds' money by making tens of millions of dollars of unsecured personal and related-party gifts or "advances" of cash, instead of purchasing receivables.

19. E&Y's own workpapers establish that E&Y had actual knowledge of the factoring companies' use of hundreds of millions of dollars of Stable-Value fund assets to purchase workers compensation and other receivables that were of substantially less liquidity, collectability and value than the quality short-term healthcare receivables represented in the financial statements. E&Y also knew about the factoring companies' use of tens of millions of dollars of Stable-Value fund assets to make unsecured gifts or

"advances" to hospitals affiliated with the factoring companies. E&Y also knew that none of these facts were disclosed in Founding Partners' financial statements.

20. Nonetheless, for each of the years 2000 through 2006, E&Y issued unqualified audit opinions in which it represented that: (a) it was independent; (b) it had conducted audits of Stable-Value's financial statements in accordance with applicable professional standards, specifically generally accepted audit standards ("GAAS"); (c) it had a reasonable basis for its opinions; and (d) Stable-Value's financial statements presented fairly in accordance with generally accepted accounting principles ("GAAP"), Stable-Value's financial position, results of operations changes in partners' capital and cash flows. As discussed in detail herein, E&Y knew that each of these representations ~~were~~was false when made.

21. E&Y addressed each of these audit opinions to "The Partners" of Stable-Value, and knew that Stable-Value's general partner, FPCM, would provide the financial statements and E&Y's accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

22. Mayer Brown also knew that Stable-Value's general partner, FPCM, would provide the financial statements and E&Y's accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

23. E&Y knew that the limited partners and other innocent decision-makers of FPCM and Founding Partners would rely upon E&Y's audit opinions in refraining from taking action to protect Founding Partners assets loaned to the factoring companies.

24. E&Y resigned as Founding Partners' auditor immediately after the 2006 audit due, according to internal E&Y documents, to the unacceptably high risk associated with the audits without disclosing their real reasons to Founding Partners. Thereafter, at least one E&Y partner lobbied for and secured E&Y's reengagement to audit Founding Partners' fiscal year 2007 financial statements in the hope of securing additional business from entities related to and/or affiliated with the factoring companies who were funded by Founding Partners.

25. E&Y knew that the 2007 financial statements were grossly and materially misstated and misleading, containing misrepresentations similar to those in the 2006 financial statements. But E&Y refused to issue an adverse audit opinion, or otherwise reveal the truth, instead dragging the audit out for over one year until shortly before Founding Partners was placed in the current receivership.

26. In connection with the 2007 audit, E&Y also knew that FPCM was using a January 2007 Confidential Offering Memorandum, containing misrepresentations similar to those in the 2006 audited financial statements that Stable-Value investor funds were used to purchase high-quality, short-term healthcare receivables, and identifying E&Y as Founding Partners' auditor.

27. The January 2007 Confidential Offering Memorandum was prepared by Mayer Brown.

28. Had E&Y refused to issue an unqualified audit opinion on Stable-Value's 2006 financial statements and otherwise revealed the truth about the factoring companies' use of Founding Partners' assets as E&Y was required to do, the limited partners and

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innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

29. Had Mayer Brown revealed the truth about the factoring companies' use of Founding Partners' assets as Mayer Brown was required to do, the limited partners and innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

30. As the result of Defendants' misrepresentations and concealment of the truth, all or a substantial amount of the over $550 million dollars which Founding Partners loaned to the factoring companies to purchase receivables and which constituted 95% of Stable-Value's portfolio, has now been lost. The factoring companies are in default and have ceased making interest payments on the loans. Moreover, only a small percentage of the outstanding loan balance is invested in and purportedly secured by the less risky, short-term, high-quality receivables that FPCM and Defendants described to limited partners and other innocent decision-makers.

II. THE 2009 SEC COMPLAINT AND RECEIVERSHIP.

31. On April 20, 2009, the Securities and Exchange Commission ("SEC") filed a five-count securities fraud complaint naming FPCM and its principal, William L. Gunlicks ("Gunlicks"), as defendants. See *Securities and Exchange Commission v. Founding Partners Capital Management Co. and William L. Gunlicks, et al.*, Case No. 2:09-CV-00290JES-SPC (M.D. Fla.).

32. In its Complaint, the SEC alleged that FPCM violated the anti-fraud provisions of the federal securities laws, including Sections 17(a)(1)-(a)(3) of the

Securities Act of 1933, Section 10(b) of the Exchange Act of 1934, Sections 206(1), (2) and (4) of the Advisers Act of 1940, and violated the SEC's December 3, 2007 Cease and Desist Order against FPCM.

33. In its Complaint, the SEC specifically alleged that FPCM and Gunlicks misrepresented through, among other things, "offering materials" and "audited financials" that investment in Stable-Value "was an investment in loans to Sun Capital that were fully secured by healthcare receivables" and that "Sun Capital would collect these receivables in less than 150 days or have them replaced with new receivables or covered by other funding." These offering materials and financial statements concealed the factoring companies' purchases of receivables that were longer term and substantially riskier than what was represented to limited partners and other innocent decision-makers of Founding Partners.

34. In addition the SEC in its Complaint alleged that FPCM and Gunlicks were in violation of a 3 December 2007 Cease and Desist Order in which the SEC found that FPCM had "caused Stable-Value to pay an undisclosed fee to a related entity, and caused several of its funds to engage in transactions inconsistent with their offering memoranda." In its complaint, the SEC alleged that FPCM failed to disclose the Cease and Desist Order as required by its terms.

35. On April 20, 2009, Judge John E. Steele of the United States District Court for the Middle District of Florida entered an order appointing a receiver (the "Initial Receiver") for Founding Partners and FPCM. The Initial Receiver was subsequently replaced by Daniel S. Newman, Esq. on May 20, 2009.

36. The Receiver was ordered to, among other things, "take immediate possession of all property, assets and estates of every kind of [the Receivership Entities] … and institute such actions and legal proceedings … as the Receiver deems necessary." The Receiver may institute legal proceedings to recover funds for Founding Partners, which when recovered will be distributed to investors.

III. <u>JURISDICTION AND VENUE.</u>

37. This Court has jurisdiction over this matter and over the Defendants.

38. E&Y is subject to personal jurisdiction pursuant to Florida's long-arm Statute, 48.193. E&Y is subject to general and specific jurisdiction in Florida because it operates a business in Florida, it maintains offices throughout Florida, it performs services in Florida and it offers services to the public through Florida-licensed accountants. In addition, E&Y committed torts in Florida.

39.

40. Mayer Brown is subject to personal jurisdiction in Florida pursuant to Florida's long-arm statute, 48.193, Fla. Stat., because it purposefully availed itself of jurisdiction in Florida. Mayer Brown committed torts in Florida, performed services for Founding Partners in Florida, its professionals visited the offices of Founding Partners in Florida, it rendered bills to Founding Partners in Florida, it negotiated on Founding Partners' behalf in Florida, and Mayer Brown employed attorneys licensed to practice law in Florida.

41. Venue is proper in this Judicial Circuit and Broward County because E&Y maintains offices in Broward County where events giving rise to the action occurred and

the causes of action accrued, and because one or more E&Y's partners, including the partners for the Founding Partners engagement, are residents of Broward County.

42. Founding Partners' claims herein are governed by Florida law, because Florida has the most significant relationship with Founding Partners' claims asserted herein. Founding Partners was based in Florida, E&Y maintains offices in Florida, and many of the services at issue were performed by E&Y and Mayer Brown in Florida.

IV. PARTIES.

43. Daniel S. Newman is the court-appointed receiver for Founding Partners.

44. E&Y is a Delaware Limited Liability Partnership with offices throughout the United States. E&Y is one of the so-called "Big Four" accounting firms.

45. E&Y was engaged to serve as outside auditor of Founding Partners, and audited Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

46. E&Y issued unqualified or "clean" audit opinions on Founding Partners' annual financial statements for each of the fiscal years ending December 31, 2000 through 2006.

47. E&Y did not complete its audit of Founding Partners' fiscal year 2007 financial statements.

48. Defendant Mayer Brown LLP is an Illinois Limited Liability Partnership with its principal place of business in Chicago, Illinois. Mayer Brown was formerly known as Mayer Brown Rowe and Maw LLP. Mayer Brown is a global law firm, employing over 1500 lawyers, and promotes its "*global reach*" and its "local market knowledge and deep

understanding of industry-specific issues to ensure we provide the best solution for the client *anywhere in the world*" on its internet website at http://www.mayerbrown.com (emphasis added).

49. All conditions precedent necessary to bringing this action and the claims herein have occurred, have been excused or have been waived.

V. THE FOUNDING PARTNERS FUNDS.

50. Stable-Value is a Delaware limited partnership with its principal place of business in Naples, Florida. Stable-Value was formerly known as Founding Partners Multi-Strategy Fund LP. FPCM is the general partner of Stable-Value. As noted, Stable-Value lent funds to Sun Capital and Sun Capital Healthcare (collectively "Sun Capital") for the purchase of high quality, short-term commercial and healthcare receivables fully securing the loans and generating stable high returns.

51. Stable-Value II is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is the general partner of Stable-Value II. Stable-Value II was created in or around 2007 after Stable-Value approached the maximum number of permissible investors. Stable-Value II's portfolio was entirely invested in Stable-Value as of December 2008.

52. Global Fund is a Cayman company registered as a mutual fund in the Cayman Islands. FPCM is Global Fund's investment manager. Global Fund invested the vast majority of its assets in Stable-Value. As of December 2008, approximately 84% of Global Fund's portfolio was invested in Stable-Value.

53. Hybrid-Value Fund f/k/a Founding Partners Equity Fund, LP, is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is Hybrid-Value Fund's general partner. Hybrid-Value Fund's investment strategy consisted of investing its assets in diversified equities and fixed income structured financial portfolio programs, although a substantial and material portion of Hybrid-Value Fund's portfolio was at all relevant times invested in Stable-Value.

VI. INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS.

54. There were at all relevant times one or more innocent limited partners of Founding Partners and other innocent decision-makers within FPCM and Founding Partners who could and would have taken action to protect Founding Partners and the funds invested in Founding Partners had they known the truth about Sun Capital's improper use of those funds. Those actions would have included, but not been limited to:

(a) consulting an attorney and following the attorney's advice;

(b) reporting to state and federal authorities, including the SEC (which was investigating Founding Partners from 2002 through the end of 2007), the use of Founding Partners' investor funds in contravention of what had been represented to investors so that the SEC could have taken appropriate action to protect the funds before Sun Capital was rendered incapable of repaying its debt to Founding Partners as the debt became due or at all;

(c) taking timely action to recover Founding Partners' funds loaned to Sun Capital at a time when Sun Capital was not insolvent and/or when Sun Capital was capable of returning to Founding Partners the loaned amounts or collateral of at least equivalent value;

(d) bringing timely action against Sun Capital to enjoin its use of Founding Partners' loan proceeds in ways contrary to its agreements with Founding Partners and contrary to what had been represented to Founding Partners' limited partners and innocent decision-makers, and to recover damages incurred at a time when Sun Capital would have been capable of paying such damages;

(e) bringing timely legal actions against FPCM and Gunlicks to enjoin their fraud and breaches of fiduciary duty to Founding Partners and their limited partners as described herein; and

(f) removing or causing the removal of Gunlicks and FPCM as general partner, and the removal of any other person responsible for the use of Founding Partners' funds in any manner inconsistent with the representations in Founding Partners' financial statements, offering memoranda and elsewhere as alleged in this Complaint.

55. At all relevant times the innocent decision-makers of FPCM and Founding Partners were unaware that Sun Capital was using Founding Partners' loan proceeds as alleged herein to:

(a) purchase workers' compensation receivables and disproportionate share receivables ("DSH");

(b) purchase and/or hold receivables aged beyond 120 days; and/or

(c) make unsecured loans and gifts to related parties.

56. At no time during the material time period was Founding Partners, nor any of the Founding Partners Funds, a "Ponzi scheme," "engine of theft," or "engine of fraud" organized for the purpose of engaging in criminal activity or committing fraud.

VII. OTHER NON-PARTIES.

A. FPCM and Gunlicks.

57. ~~55.~~ FPCM is a Florida corporation with its principal place of business in Naples, Florida. FPCM is registered with the SEC as an investment adviser. In December 2007, FPCM consented to the entry of a SEC order censuring it and ordering it to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act. *In the Matter of Founding Partners Capital Management Co. and William Gunlicks*, Administrative Proceeding File No. 3-12896.

58. ~~56.~~ FPCM began operations in or around 1996.

59. ~~57.~~ FPCM was established as a private hedge fund that by 2000 primarily acted as a lender of monies to a group of affiliated entities, which purchased or factored receivables.

60. ~~58.~~ During the material time period, FPCM employed certain individuals who assisted in the management of FPCM. These individuals include at least the following: Judy Aller, FPCM's controller; Phillip Fues, FPCM's chief credit officer; and Leonard Llewellyn, managing director.

61. ~~59.~~ FPCM owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

62. ~~60.~~ Gunlicks was the president and CEO of FPCM, and as such is the primary beneficiary of FPCM's management fees. In the SEC administrative proceeding, Gunlicks consented to the entry of an SEC order requiring him to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act of 1933.

63. ~~61.~~ Gunlicks was the person primarily responsible for the creation and management of FPCM. E&Y provided tax services to him and his family for nearly 25 years.

64. ~~62.~~ Gunlicks personally managed the Founding Partners' funds and the investment of those funds in Sun Capital. Gunlicks also personally managed Founding Partners' relationship with Sun Capital and negotiated with Sun Capital.

65. ~~63.~~ Gunlicks owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

66. ~~64.~~ The misconduct of FPCM and Gunlicks alleged herein, including but not limited to, the preparation and dissemination of false and fraudulent financial statements and offering memoranda, was completely and totally adverse to the interests of Founding Partners, and Founding Partners in no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein only resulted in the depletion and loss of Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

B. Sun Capital.

67. ~~65.~~ Sun Capital, Inc. ("SCI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCI purported to be in the business of providing

accounts receivable funding for commercial companies. The financing was funded with loans from Stable-Value.

68. ~~66.~~ Sun Capital Healthcare, Inc. ("SCHI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCHI purported to be in the business of providing accounts receivable financing to healthcare providers. The financing was funded with loans from Stable-Value.

69. ~~67.~~ SCHI and SCI are based in Boca Raton, Florida. Their principals are Howard Koslow, Lawrence Leder and Peter Baronoff. Two other related entities, Promise Healthcare, Inc. and Success Healthcare, LLC were essentially owned and controlled by the same owners of SCHI and SCI.

70. ~~68.~~ Collectively, SCHI and SCI are referred to herein as the "Sun Capital" entities.

71. ~~69.~~ In its working papers, E&Y described Sun Capital as "a specialty finance company that performs factoring almost exclusively in the healthcare area (with a small amount of commercial receivables as well)."

VIII. FOUNDING PARTNERS' INVESTMENT STRATEGY – LOANS TO SUN CAPITAL SECURED BY FACTORED RECEIVABLES.

72. ~~70.~~ Stable-Value and Stable-Value II purportedly applied an investment strategy designed to yield stable above-average returns through lending facilities used to purchase accounts receivable primarily in the healthcare sector.

73. ~~71.~~ Since 2001, Stable-Value used money invested in the funds by individual and institutional investors and family trusts to make loans to Sun Capital to finance Sun

Capital's discounted purchase of receivables. These loans are the primary focus of Stable-Value's investment program and represent approximately 95% of its portfolio. Founding Partners' three other funds, Stable-Value II, Global Fund, and Hybrid-Value Fund, were invested in part or in whole in Stable-Value.

74. ~~72.~~ Pursuant to the written loan agreements between Stable-Value and Sun Capital, Sun Capital could use the loan proceeds to purchase healthcare and commercial receivables, although it has focused primarily on purchasing healthcare receivables. Under the agreements, Sun Capital could draw on the loans to purchase the receivables which would generate income to pay interest on the loans on a monthly basis and which would provide security and funds to repay the principal. Sun Capital charged its factoring clients a fee of approximately 3% per month until it collected the receivables and paid Stable-Value interest of approximately 1.3% per month.

75. ~~73.~~ FPCM charged Stable-Value a 1.75% annualized management fee on the total assets of the fund. Stable-Value investors did not receive any automatic distributions from the fund. According to fund documents, however, redemptions of investments were available on a quarterly basis requested in writing with at least sixty days notice.

76. ~~74.~~ In or around June 2000, Stable-Value began lending to SCHI and later to its affiliate, SCI. Stable-Value's loans were made pursuant to detailed Credit and Security Agreements with SCHI and later SCI. During its audits, E&Y reviewed or should have reviewed these and other material agreements. Under the SCHI Agreement, SCHI was required to borrow only from Stable-Value, and it was permitted to use the funds only for approved uses, primarily for factoring healthcare accounts receivable. The SCHI

Agreement established a "borrowing base," consisting of a cushion of collateral determined by a specified formula to assure loans were sufficiently collateralized.

77. ~~75.~~ As it was originally intended, Stable-Value loaned monies to SCHI to facilitate SCHI's purchase of healthcare accounts receivable, and SCI purchased commercial accounts receivable with monies received from Stable-Value.

78. ~~76.~~ Neither Stable-Value nor any of the other Founding Partners' funds received any fees or other remuneration from investment in any of the Founding Partners' funds or from loans to Sun Capital. Rather, all administrative or managerial fees were paid to FPCM, and any income generated from loans to Sun Capital was held or re-loaned to Sun Capital solely for the benefit of Founding Partners' investors.

79. ~~77.~~ As represented in the E&Y-audited Founding Partners' financial statements, and in disclosure documents prepared, reviewed, or amended by Mayer Brown, at all relevant times, the vast majority of the funds Founding Partners loaned to Sun Capital were loaned to SCHI, purportedly for the purchase of high-quality short-term healthcare receivables, which were to fully secure the loans and generate stable yields.

80. ~~78.~~ Factoring involves the purchase of accounts receivable – monies owed to a company – at a discount in exchange for the right to be paid the full debt owed on the accounts receivable. Both the offering memorandum for Stable-Value and supplements to the offering memorandum for Stable-Value use the following illustration of the factoring process:

Determination of net amount to be funded to Seller Gross Amount of Claim (Invoice)	$100,000

Adjustment for anticipated disallowances Based upon field audit @ 20%	($20,000)
Net Collectible Amount (NCA) as determined Pursuant to Purchase and Sale Agreement	$80,000
Advance percentage	80%
Gross amount to be funded to Seller	$64,000
Less 30 day discount fee deducted (3% of NCA)	($2,400)
Net amount to be funded to Seller	$61,600
Request for Loan Advance **Sun Capital Healthcare, Inc. (SCH) submits request to Founding Partners Multi-Strategy Fund, L.P. (Partnership) for loan advance**	
Founding Partners transfers funds to SCH	**$61,600**
SCH purchases receivables and funds Seller	**($61,600)**
Collection of Receivables **Invoice pays on the 90th day after purchase and remittance is sent to bank lockbox**	
Lock-Box Bank transfers funds from lockbox to SCH	$80,000
Payments from Collection of Receivables **SCH pays down loan**	**($61,600)**
Payment to SCH of additional discount fee ($80,000 @ 6%)	**($4,800)**
Reserve balance either held until other invoices are paid or transferred to Seller	**($13,600)**
Balance for this Flow of Funding Illustration	**$0**

81. ~~79.~~ Pursuant to the SCHI Agreement and as more fully explained therein, SCHI was only permitted to purchase eligible receivables of certain quality and character. Under the SCHI Agreement, SCHI was required to replace any receivables that had not been collected within a specified time period with fresh receivables to maintain the

borrowing base. It is widely understood that generally accounts receivables become more difficult to collect as they age.

82. Mayer Brown drafted the SCHI Agreement for Stable-Value.

83. ~~80.~~ Stable-Value entered into a similar Credit and Security Agreement dated January 24, 2002 with SCI (the "SCI Agreement") which provided that Stable-Value would lend monies to SCI for the purchase of eligible commercial accounts receivable. Among other characteristics, SCI could not factor accounts receivable that could not be insured, such as a law firm's receivables. Mayer Brown drafted the SCI Agreement for Stable-Value.

84. ~~81.~~ In exchange for the loans, SCHI and SCI were required to pay Stable-Value interest on a monthly basis. The principal would be due at the end of specified terms, unless accelerated.

85. ~~82.~~ Pursuant to the SCHI and SCI Agreements drafted by Mayer Brown, Stable-Value was supposed to receive a fully-perfected, first-priority security interest in the accounts receivable being purchased by the Sun Capital entities.

86. ~~83.~~ The SCHI and SCI Agreements prohibited the respective Sun Capital entities from using the loans Stable-Value extended unless they were purchasing eligible receivables, repaying the loans or using the monies for certain other approved uses.

87. ~~84.~~ Mayer Brown and E&Y knew that the cornerstone of the relationship between Founding Partners and the Sun Capital entities was the safety and collectability of the factored accounts receivable.

88. ~~85.~~ Mayer Brown knew or should have known that purchases of worker compensation and/or DSH accounts receivable constituted a material breach of the SCHI Agreement and that any modifications to the SCHI Agreement to permit the purchase of these accounts receivable had to be in writing.

89. ~~86.~~ Mayer Brown and E&Y knew that SCHI was factoring non-compliant accounts receivable and ineligible accounts receivable, and specifically that SCHI was factoring highly risky workers compensation and DSH receivables.

90. ~~87.~~ Mayer Brown knew that Stable-Value had not modified the SCHI Agreement in writing to permit the factoring of workers compensation and DSH accounts receivable. Mayer Brown failed to advise the limited partners and innocent decision makers concerning SCHI's non-compliant purchases of highly risky workers compensation and DSH accounts receivable in investment solicitation documents.

91. ~~88.~~ Upon information and belief, Mayer Brown knew that SCHI and SCI were in breach of the SCHI and SCI Agreements, and was aware of SCI and SCHI's deviation from the terms of the SCI and SCHI Agreements, but it did not advise the limited partners and innocent decision makers that SCI and SCHI were deviating from the terms of the Agreements. Mayer Brown also failed to advise the limited partners and innocent decision makers concerning the legal consequences of such breaches and deviations for Founding Partners, or concerning waiver of default.

92. ~~89.~~ Upon information and belief, Mayer Brown drafted certain amendments to the SCI and SCHI Agreements that extended the maturity date for repayment of principal and increases in the total amount borrowed, knowing that these amendments

caused Founding Partners' exposure to default by SCI and SCHI to increase. Mayer Brown failed to advise the limited partners and innocent decision makers concerning the legal consequences and risks to Founding Partners of those amendments.

93. ~~90.~~ SCHI began to experience significant defaults in payment of the accounts receivable it factored, a fact known to Mayer Brown.

94. ~~91.~~ SCHI purchased highly risky accounts receivable from troubled hospitals that desperately needed funds to remain in operation. Mayer Brown knew that SCHI was factoring for troubled hospitals, but it failed to advise the limited partners and innocent decision makers of those transactions.

IX. WITH E&Y'S AND MAYER BROWN'S KNOWLEDGE AND ASSISTANCE, FPCM AND GUNLICKS TOUTED THE SAFETY OF THE SUN CAPITAL LOANS.

95. ~~92.~~ The cornerstone of FPCM's presentation of the Stable-Value investment opportunity was the safety and lack of risk of the loans to Sun Capital, which provided steady and stable returns. Stable-Value's E&Y-audited financial statements, which were provided to limited partners and other innocent decision-makers, likewise represented the relative safety of the loans due to the criteria applicable to factored receivables serving as collateral for the loans. For example, the 2005 financial statements, audited by E&Y, represented that Stable-Value's purpose was to achieve stable and above-average returns, while preserving capital, through an investment strategy that "utilizes a healthcare and commercial receivable investment product." The 2005 financial statements further represented that receivables factored by SCHI, which represented the vast majority of Stable-Value's loans, were healthcare receivables payable by insurance companies, Blue

Cross/Blue Shield plans, and government programs such as Medicare and Medicaid, and that healthcare receivables "that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers."

96. ~~93.~~ Stable-Value's offering materials stated the loans were secured by healthcare receivables that "are the payment obligations of Federal and State government agencies, and certain U.S. insurance companies rated by various rating firms."

97. ~~94.~~ E&Y and Mayer Brown knew that FPCM and Gunlicks also represented to limited partners and other innocent decision-makers that the loans were collateralized according to strict criteria such that the underlying receivables would only be "investment grade." Moreover, Gunlicks explained to limited partners and other innocent decision-makers that the loan agreements provided that all of Sun Capital's assets, including the receivables, collateralized the loan balance and any accrued interest.

98. ~~95.~~ For example, in Stable-Value's "Confidential Supplement to Confidential Memorandum dated ~~May 2002~~June 2000" (the "~~May 2002~~June 2000 Memorandum"), FPCM and Gunlicks represented that Stable-Value's "investment objective is to achieve above-average rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Partnership's investment program is designed to accomplish this objective through the implementation of a Stable-Value investment strategy that has no correlation to the equity and bond markets."

99. ~~96.~~ The ~~May 2002~~June 2000 Memorandum further represented that:

> Pursuant to the Credit and Security Agreements [between Stable-Value and SCHI, SCHI] agrees to use the Proceeds of the loans to finance [SCHI's] purchase of receivables arising

> out of the delivery of medical, surgical, diagnostic or other healthcare related goods or services (such receivables being referred to collectively as "Healthcare Receivables" payable by third parties (the "Third Party Payors") such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid. Pursuant to the Credit and Security Agreement, loan proceeds that have not been used by [SCHI] to acquire Healthcare Receivables are to be held in a bank account (the "Holding Account") until they are used to acquire Healthcare Receivables or to make payments to [Stable-Value].

The ~~May 2002~~June 2000 Memorandum also represented that eligible receivables under the agreement between Stable-Value and SCHI would consist of receivables "that satisfy certain criteria, including that fewer than one hundred twenty (120) days have passed since the date on which the applicable services were provided by the applicable seller to the applicable patient."

100. ~~97.~~ Founding Partners' monthly performance reports reassured its limited partners that "the loans are secured by the healthcare receivables."

101. ~~98.~~ Founding Partners' monthly performance reports, which were provided to its limited partners, represented that as of January 2007, approximately 93% of the healthcare receivable payors were rated Aa or above by rating firms such as Moody's, Standard & Poor's, and A.M. Best.

102. Also, the Founding Partners Disclosure Brochure Form ADV Part II represented

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a

> stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation requirements, as described in the Stable-Value Fund's Offering Memorandum.

103. The Disclosure Brochure also encouraged limited partners to rely on the Offering Materials for descriptions of the lending program and risks.

104. As Mayer Brown knew or should have known, the Disclosure Brochure is required to be, and was provided to all potential investors, and was re-sent to all limited partners annually.

105. The Founding Partners Disclosure Brochure was prepared with the assistance of Mayer Brown.

106. ~~99.~~ As an essential part of its audits of the financial statements of Founding Partners, E&Y was required by GAAS to understand Founding Partners' business. This required E&Y to read and understand Founding Partners' offering and promotional materials, including those prepared by Mayer Brown, and to read and understand other reports of Stable-Value's performance provided to limited partners. Accordingly, E&Y was obligated to read and understand the offering material and performance reports referenced above. On information and belief, E&Y read and understood these materials.

X. SUN CAPITAL BEGAN TO USE STABLE-VALUE'S FUNDS TO PURCHASE INELIGIBLE AND HIGH-RISK RECEIVABLES AND TO MAKE HIGH RISK LOANS TO RELATED-PARTY ENTITIES.

107. ~~100.~~ Beginning in approximately 2003, Sun Capital began to invest in receivables of a materially different character than what was permitted in the agreements and what FPCM and Gunlicks were continually representing to limited partners and investors. In addition, Sun Capital began to misuse and misappropriate the proceeds of the loans from Stable-Value by diverting the loan proceeds to affiliated entities, and to themselves, for purposes unrelated to the purchase of receivables.

A. Worker's Compensation Receivables.

108. ~~101.~~ At first, at least by 2004, SCHI began purchasing workers' compensation receivables with funds loaned to SCHI by Stable-Value. The collectability of these receivables was substantially less certain than the healthcare receivables represented to limited partners and investors, in part because they were based on un-adjudicated workers' compensation claims.

109. ~~102.~~ Moreover, as E&Y documented in its audit workpapers, these workers' compensation receivables "typically have a longer collection period that may be a number of years." In fact, these receivables could and did take many years to collect, creating greater liquidity risks for Sun Capital and, in turn, for Stable-Value's limited partners. It is generally understood that the longer it takes to collect a receivable, the less likely it is that the full amount or any portion thereof will actually be recovered.

110. ~~103.~~ It was virtually certain that all of the workers' compensation receivables would age beyond 120 days, and substantially so before they could potentially be collected.

Indeed, the majority of these workers' compensation receivables SCHI purchased were also not eligible for purchase by SCHI at inception because they were already more than 120 days old (or in some cases, more than 150 days old) at the time of purchase.

111. ~~104.~~ These workers' compensation receivables also did not present the option for Sun Capital to return any uncollectible amounts because Sun Capital purchased them in bulk at a discount. For instance, Sun Capital purchased some workers' compensation receivables for $11.5 million that had a face value of $23 million.

112. ~~105.~~ SCHI purchased tens of millions of dollars of ineligible workers' compensation accounts receivable with E&Y's and Mayer Brown's actual knowledge.

B. Disproportionate Share ("DSH") Payments.

113. ~~106.~~ In or about 2004, SCHI began purchasing (with Stable-Value funds) a risky type of healthcare "receivable" called "Disproportionate Share" payments (commonly referred to in the industry as "DSH"). DSH payments are a special type of Medicare and Medicaid payment the government makes to healthcare providers in poor or underserved areas. The government initially makes a payment at the normal reimbursement rate and in the normal collection period. The second payment – the DSH – is an amount in excess of the normal rate, which the government pays on average two years after the date of service, and then only if the provider is still operating. According to E&Y's workpapers, DSH payments "typically take up to 3 years to collect … ."

114. ~~107.~~ DSH payments did not constitute true "receivables" because the government had no obligation to pay them and could discontinue or reduce the payments at

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any time. They, at best, constituted a "hope" that the government would pay at some point in the future at a rate similar to those received in the past.

115. ~~108.~~ Anticipated DSH payments are thus considerably riskier than standard healthcare receivables. They add significant liquidity risks due to their collection delays. More importantly, they add a "going concern" risk that ties their collectability to the provider's ability to continue to operate successfully, because the government is under no obligation to pay them if the hospital enters bankruptcy. The risk was very substantial, and the purchase of DSH was reckless, because these "receivables" were often purchased from hospitals that were already financially distressed.

116. ~~109.~~ Anticipated DSH payments were ineligible for purchase under SCHI's agreement with Stable-Value due to the length of time it took to receive them, because they were not receivables for healthcare services, and because they did not actually constitute accounts receivable.

117. ~~110.~~ The SCHI Agreement was not amended to permit the purchase of workers' compensation accounts receivable or DSH. It was also not amended to change the definition of borrowing base, which was affected by the non-compliant purchases of workers compensation and DSH.

118. SCHI purchased tens of millions of dollars of ineligible DSH payments with E&Y's and Mayer Brown's actual knowledge.

C. **Related Party Transactions, Including Unsecured Diversion of Founding Partners' Funds.**

119. ~~111.~~ In 2003, Sun Capital's principals, through two separate corporations, began purchasing distressed hospitals and associated real estate. Among these hospitals were long-term acute care facilities that were organized and owned under the corporate structure of Promise Healthcare, Inc. ("Promise Healthcare"), which was owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

120. ~~112.~~ The Sun Capital principals acquired other hospitals, which they owned and organized under the corporate structure of Success Healthcare, Inc. ("Success"). Success was likewise owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

121. ~~113.~~ In addition, by no later than 2006, a substantial and material amount of the healthcare receivables purchased by Sun Capital with Stable-Value funds consisted of receivables purchased from Promise Healthcare – a related party to and under common ownership with Sun Capital. Sun Capital purchased millions of dollars of these receivables from Promise Healthcare in 2006 alone.

122. ~~114.~~ Also by ~~2006,~~no later than 2003, Sun Capital began using substantial amounts of Stable-Value funds to provide working capital advances to Promise Healthcare and Success to purchase hospitals and land, to improve hospitals, and to subsidize the substantial losses incurred by struggling hospitals to keep them from closing.

123. ~~115.~~ These advances were an extremely high-risk misuse of Stable-Value funds, and were in no way authorized by the SCHI Agreement or the SCI Agreement. The advances were unsecured, did not generate income, and were not even subject to any repayment obligations. Indeed Sun Capital was not even motivated to recover the amounts advanced, but simply to keep the hospitals owned by the principals of Sun Capital afloat. It was or should have been apparent to E&Y that Sun Capital never had any intention of even attempting to collect these related-party advances from the hospitals.

XI. FOR YEARS, E&Y SERVED AS FOUNDING PARTNERS' OUTSIDE AUDITOR AND WAS INTIMATELY FAMILIAR WITH FOUNDING PARTNERS, FPCM AND SUN CAPITAL.

A. E&Y Knew the Founding Partners' Audits Were High Risk.

124. ~~116.~~ E&Y performed audits of the Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

125. ~~117.~~ E&Y was or should have been intimately familiar with the business, operations and financial condition of Founding Partners as well as FPCM.

126. ~~118.~~ E&Y negligently, recklessly, or intentionally failed to designate its audits of Founding Partners as "high-risk" which would or should have triggered additional and/or enhanced audit procedures.

127. ~~119.~~ In its workpapers for at least its audits of Stable-Value's 2005 and 2006 financial statements, E&Y specifically identified the following fraud risks consistent with the audits:

"Identified Fraud Risks

- Management consists of a few individuals who can override controls in place,
- Misappropriation of investor cash receipts,
- The Fund does not have ownership of securities,
- Investments are not recorded at fair value, and
- Management utilizes trading activities prohibited by the SEC and other regulatory agencies."

B. E&Y Was Intimately Familiar With the Operations of and Receivables Factored by Sun Capital.

128. ~~120.~~ E&Y knew and understood that essentially all of Stable-Value's business consisted of making loans to Sun Capital.

129. ~~121.~~ Founding Partners' financial condition was dependent on Sun Capital's ability to repay the loans from Stable-Value and to make scheduled interest payments on the outstanding principal balance.

130. ~~122.~~ Because essentially all of Stable-Value's business consisted of loans to fund the factoring operations of Sun Capital, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required E&Y to gain an accurate and detailed understanding of the business, operations, and financial condition of Sun Capital and the Promise Healthcare and Success hospitals.

131. ~~123.~~ Especially because the safety of the loans was a key and critical feature of investment in Stable-Value, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required a thorough and critical examination, evaluation, analysis, and assessment of the nature and value of the collateral securing the loans.

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132. ~~124.~~ E&Y in fact audited the financial statements of Sun Capital for the three (3) fiscal years ended December 31, 2002 through 2004. These audits were performed by personnel from E&Y's South Florida office in Fort Lauderdale, Florida.

133. ~~125.~~ Prior to 2002, Sun Capital's financial statements were audited by a regional accounting firm.

134. ~~126.~~ For Sun Capital's 2005 and 2006 fiscal years, E&Y did not audit Sun Capital's financial statements, but rather at E&Y's own recommendation performed certain inadequate AUPs on the Sun Capital assets (receivables) serving as collateral to secure the Stable-Value loans.

135. ~~127.~~ AUPs are far less stringent and exacting than an audit.

136. ~~128.~~ E&Y suggested to FPCM, Gunlicks and Sun Capital the switch from audits to AUPs, and FPCM, Gunlicks and Sun Capital accepted E&Y's suggestion.

137. ~~129.~~ E&Y's Sun Capital audits and AUP work were performed to assist E&Y's audits of Founding Partners' financial statements.

138. ~~130.~~ As a result of its Sun Capital audits and AUP work, E&Y became intimately familiar with the business operations and activities of Sun Capital, and with the receivables factored by Sun Capital.

139. ~~131.~~ E&Y knew and understood that Founding Partners was the only source of funding for Sun Capital's business operations.

140. ~~132.~~ As a result of its audits and AUPs, E&Y knew or should have known that Sun Capital, since 2003, was factoring material amounts of workers' compensation receivables and DSH payments that differed materially in character from the receivables

described to investors in Founding Partners' financial statements and offering materials, and that Sun Capital transferred substantial sums of loan proceeds to related parties in the form of unsecured loans or other "advances." In breach of the duties it owed to Founding Partners and to their limited partners, E&Y nonetheless issued unqualified or "clean" audit opinions on Founding Partners' materially misstated financial statements for the fiscal years ended December 31, 2004 and 2005.

XII. STABLE-VALUE'S FINANCIAL STATEMENTS AND OFFERING MATERIALS MISREPRESENTED THAT THE SUN CAPITAL LOANS WERE FULLY COLLATERALIZED BY COLLECTIBLE SHORT-TERM HEALTHCARE RECEIVABLES.

A. Misrepresentations in Stable-Value's 2006 E&Y-Audited Financial Statements.

141. ~~133.~~ Stable-Value's annual financial statements for the fiscal year ending December 31, 2006, were issued in ~~May~~June 2007. E&Y issued an unqualified audit opinion dated May 23, 2007 on those financial statements~~ dated May 23, 2007.~~. E&Y's unqualified audit opinion was addressed to "The Partners" of Stable-Value.

142. Upon information and belief, Adam Miller was the senior manager and James Schacterle was the engagement partner for the 2006 audit. They were in charge of the 2006 audit process, and approved the unqualified audit opinion.

143. ~~134.~~ The 2006 financial statements represented the fair value of the loans to Sun Capital to be $253,967,276.

144. ~~135.~~ The 2006 Stable-Value financial statements represented that 86% of Stable-Value's total investments consisted of loans to SCHI and 3.44% consisted of loans to SCI. Thus, 89.44% of Stable-Value's total investments consisted of loans to Sun

Capital. Those loans constituted approximately 87% of Stable-Value's total reported assets of $291,840,960.

145. ~~136.~~ The Notes to Stable-Value's financial statement stated that Stable-Value was formed to obtain an above-average return while preserving capital and "[t]he investment strategy utilizes a healthcare and commercial receivable investment product."

146. ~~137.~~ With respect to Founding Partners' loans to SCHI, the Notes to the 2006 Stable-Value financial statements, audited by E&Y, represented that:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

This representation was materially false and misleading.

147. ~~138.~~ E&Y's own workpapers for its audit of Stable-Value's 2006 financial statements document that as of December 31, 2006, $54,419,862 of the receivables SCHI purchased with Stable-Value investor funds consisted of workers' compensation receivables, as described above. This amount constituted approximately 22% of the reported value of Stable-Value's loans outstanding to Sun Capital at 31 December 2006. The existence and amount these workers' compensation receivables, the fact that they were ineligible for purchase under the SCHI Agreement, and the high risk associated with their collection were all facts material to Stable-Value's financial statements for the fiscal year

ended December 31, 2006, and GAAP required that they be disclosed. But there was no such disclosure of any of these facts in those E&Y-audited financial statements.

148. ~~139.~~ E&Y knew or should have known that the workers' compensation receivables purchased by Sun Capital with Stable-Value investor funds were substantial and materially riskier and longer in term than the receivables described in Stable-Value's E&Y-audited financial statements.

149. ~~140.~~ An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the workers' compensation receivables as follows:

> Workers' Compensation
>
> These receivables typically have a longer collection period that may be a number of years. Workers' compensation collateralized balances totaled approximately $58 million as of December 31, 2007. Sun Capital typically advances only approximately 50-60% on these receivables to their customers given the longer collection period and risk of non-collection.

150. ~~141.~~ In addition, Sun Capital used substantial and material amounts of Founding Partners' funds to make advances to related-party factoring clients which were financially distressed or insolvent.

151. ~~142.~~ E&Y's 2006 workpapers reflect over $39 million in outstanding and undisclosed advances funded with Founding Partners investors' cash from Sun Capital to Promise Healthcare, which was then owned by the principals of Sun Capital. On a document entitled "Promise Healthcare Client Summary Report, from 1/1/2006 to 12/31/2006" provided by Sun Capital to E&Y, and bearing a fax transmittal date of March 26, 2007, E&Y noted the following with respect to these advances:

> Note: This Company is not a real factoring client and was set up for tracking purposes. From time to time throughout the year, Sun Capital advances money to Promise Healthcare entities before there are any receivables available for purchase. Sun Capital does not want to charge factoring fees on this advance since there are no outstanding invoices to track, however they also do not want to lose money on these advances. As a result, Sun Capital charges Promise its costs of capital with Founding Partners on the amount advanced, until receivables are available for purchase. The associated fees are tracked separately as non-factored fees (see Fee section hereon).

E&Y thus understood that these advances were unsecured and were made with funds Sun Capital borrowed from Founding Partners' investors, without any disclosure in Founding Partners' financial statements.

152. ~~143.~~ The nature, existence, and amount of these advances were material to the financial statements of Stable-Value and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y audited financial statements.

153. ~~144.~~ The notes to Stable-Value's 2006 financial statements further specifically represented that:

> Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers.

This representation was false and materially misleading.

154. ~~145.~~ E&Y's own AUPs with respect to Sun Capital performed in connection with E&Y's audit of Stable-Value's December 31, 2006 financial statements and documented in E&Y's workpapers, demonstrate that at December 31, 2006, at least 27% of the healthcare receivables factored by SCHI were aged beyond 120 days.

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155. ~~146.~~ In addition, E&Y's workpapers further document that as of December 2006, at least $36 million of the healthcare "receivables" SCHI purchased with Stable-Value investor funds consisted of anticipated DSH payments (purchased primarily from the financially distressed hospitals now owned by the principals of Sun Capital.) As alleged herein, these anticipated DSH payments did not constitute actual "healthcare receivables" as represented in Stable-Value's E&Y-audited financial statements.

156. ~~147.~~ The existence, nature, and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed due to their impact on risk. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

157. ~~148.~~ E&Y knew or should have known that the anticipated DSH payments purchased by Sun Capital with Stable-Value investor funds were not disclosed in Stable-Value's E&Y-audited financial statements, and that they were of a substantially and materially riskier and longer in term nature than what those financial statements described as the collateral securing Stable-Value's loans to Sun Capital.

158. ~~149.~~ An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the anticipated DSH payments as follows:

> DSH
>
> Disproportionate Share Hospital receivables ("DSH") represent receivables from the government for care provided to low income patients under Medicaid and other programs. These amounts typically take up to 3 years to collect however ultimate collection experience has been very good per the CFO of Sun Capital.

159. ~~150.~~ As alleged above, by their very nature the anticipated DSH payments and the vast majority of the workers' compensation receivables would not be collected (if at all) within 120 days.

160. ~~151.~~ The fact and amount of the receivables and anticipated DSH payments aged beyond 120-days were material to Stable-Value's financial statements, and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

161. ~~152.~~ Stable-Value's 2006 E&Y-audited financial statements were also false and materially misleading because they failed to disclose that a substantial and material amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare – a related party to Sun Capital. The related-party nature of these purchases was material to Stable-Value's 2006 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

162. ~~153.~~ E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these purchases should have been disclosed in Stable-Value's financial statements.

163. ~~154.~~ Stable-Value's 2006 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and

materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

164. ~~155.~~ E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

165. ~~156.~~ Stable-Value's 2006 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing ineligible receivables and by giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

166. ~~157.~~ Moreover, the financial statements further represented that: "The General Partner believes that the carrying value of the financing agreements approximates fair value."

167. ~~158.~~ Stable-Value's 2006 E&Y-audited financial statements grossly and materially overstated the fair value of Stable-Value's loans to Sun Capital. E&Y failed to perform adequate audit procedures to determine whether this representation was false.

168. ~~159.~~ Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

169. ~~160.~~ However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

170. ~~161.~~ An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

B. Stable-Value's 2004 and 2005 E&Y-Audited Financial Statements Contain Similar Material Misrepresentations.

171. ~~162.~~ Stable-Value's annual financial statements for the fiscal years ending December 31, 2004 and 2005, contained misrepresentations substantially similar to those in Stable-Value's 2006 E&Y-audited financial statements.

172. ~~163.~~ E&Y issued an unqualified audit opinion dated June 6, 2005 on Stable-Value's 2004 financial statements ~~dated June 6, 2005, and~~. That audit opinion was addressed to "Partners" of Stable-Value.

173. Stable Value's 2005 financial statements were issued June 27, 2006.

174. ~~164.~~ E&Y issued an unqualified audit opinion dated June 23, 2006 on Stable-Value's 2005 financial statements ~~dated June 23, 2006 and~~. That audit opinion was addressed to "The Partners" of Stable-Value.

175. Upon information and belief, Jack Mulhbeier was the engagement partner and Cliff Stoops was the senior manager for the 2004 and 2005 audits. They were in charge of the 2004 and 2005 audits, and approved the unqualified audit opinions.

176. ~~165.~~ The Notes to Stable-Value's 2004 and 2005 E&Y-audited financial statements represented that:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

177. ~~166.~~ The Notes to Stable-Value's 2005 E&Y-audited financial statements further ~~requested~~represented that:

> The individual underlying healthcare and commercial trade receivables, and additional Borrowers' assets, will serve as collateral for the loans to the Borrowers. … **Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers**.

(Emphasis added.)

178. ~~167.~~ The foregoing representations in Stable-Value's 2004 and 2005 E&Y-audited financial statements were materially false and misleading. A substantial and material amount of the funds Stable-Value loaned to SCHI as of December 31, 2005 were used for purposes other than those represented in Stable-Value's financial statements.

179. ~~168.~~ Stable-Value's 2004 and 2005 financial statements were materially false and misleading because, as of December 31, 2004 and 2005, SCHI had used substantial and material amounts of Stable-Value loan proceeds to purchase anticipated DSH payments as described herein. These anticipated DSH payments were documented in E&Y's workpapers, and totaled at least $36 million at December 31, 2005, and $12.7 million at December 31, 2004.

180. ~~169.~~ The existence, nature and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited 2004 or 2005 financial statements.

181. ~~170.~~ E&Y knew ~~or should have know~~ of the existence and materiality of the anticipated DSH payments SCHI purchased with Stable-Value loan proceeds, but nonetheless issued unqualified audit opinions on Stable-Value's 2004 and 2005 financial statements without disclosing or requiring disclosure of the existence, nature or amount of these anticipated DSH payments.

182. ~~171.~~ SCHI had also used a substantial and material amount of the funds Stable-Value loaned to it as of December 31, 2005 to make unsecured loans or advances to related parties, including Promise Healthcare. The nature and amount of these related party loans or advances was material to the financial statements of Stable-Value, but there was no such disclosure in Stable-Value's 2005 financial statements.

183. ~~172.~~ E&Y knew or should have ~~know~~known of the existence and materiality of SCHI's unsecured loans or advances to related parties described above, but nonetheless issued an unqualified audit opinion on Stable-Value's 2005 financial statements without disclosing or requiring any disclosure of these related party loans or advances.

184. E&Y's workpapers also document E&Y's knowledge that, as of December 31, 2005, Sun Capital owned over 25,000 workers compensation receivables which it had purchased with Stable-Value loan proceeds. According to documents included in E&Y's

workpapers, these workers compensation receivables at December 31, 2005 totaled over $56.3 million, with more than $51.3 million aged over 180 days.

185. The existence, amount, and age of these workers compensation receivables was material to Stable Value's 2005 financial statements, but there was no disclosure of the existence, amount, or age of these workers compensation receivables in Stable-Value's 2005 financial statements. As a result, Stable-Value's 2005 financial statements were materially misstated and omitted material facts.

186. Despite its knowledge of such workers compensation receivables at December 31, 2005, E&Y issued unqualified audit opinions on Stable-Value's 2005 financial statements, without requiring disclosure of these receivables.

187. ~~173.~~ Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that a substantial and material amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare—a related party to Sun Capital. The related party nature of these purchases was material to Stable-Value's 2005 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

188. ~~174.~~ E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these transactions should have been disclosed in Stable-Value's financial statements. E&Y, however, issued

an unqualified audit opinion on Stable-Value's 2005 financial statements without any such disclosure.

189. ~~175.~~ Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that as of December 31, 2005, SCHI had used a substantial and material amount of the funds Stable-Value loaned to it to purchase workers compensation receivables, as described herein. The existence, nature and amount of these workers compensation receivables was material to the financial statements of Stable-Value, and GAAP required their disclosure. But there was no such disclosure in Stable-Value's E&Y-audited 2005 financial statements.

190. ~~176.~~ E&Y knew or should have known of the existence or amount of these workers compensation receivables, which served as collateral for Stable-Value's loans to SCHI, and E&Y knew or should have known that the existence, nature and amount of these workers compensation receivables was material to Stable-Value's 2005 financial statements. But E&Y issued an unqualified audit opinion on those financial statements without any such disclosure.

191. ~~177.~~ Stable-Value's 2005 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

192. ~~178.~~ E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than

that associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

193. ~~179.~~ Stable-Value's 2005 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing receivables that were not eligible for purchase pursuant to the SCHI Agreement or SCI Agreement and by giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

194. ~~180.~~ Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

195. ~~181.~~ However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

196. ~~182.~~ An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

C. **E&Y Aided and Abetted the Dissemination of the False and Fraudulent January 2007 Confidential Offering Memorandum Prepared By Mayer Brown.**

197. ~~183.~~ The January 2007 Confidential Offering Memorandum prepared by Mayer Brown identified Mayer Brown as Stable-Value II's counsel and E&Y as Stable-Value II's "independent accountants" and "independent auditors."

198. Mayer Brown caused the formation of Stable-Value II in Delaware, and obtained authorization for Stable-Value II to conduct business in Florida.

199. Mayer Brown formed Stable-Value II, because Stable-Value had reached the maximum number of investors it could have under its exemption from registration, and thus had a very limited ability to raise capital for new loans for the purchase of either short-term healthcare receivables, or workers compensation receivables or DSH payments.

200. ~~184.~~ GAAS required that E&Y read and understand the January 2007 Confidential Offering Memorandum in order to gain and maintain an understanding of Founding Partners' business. Indeed E&Y, at some point, placed and maintained a copy of the January 2007 Confidential Offering Memorandum in its audit workpapers and/or permanent file.

201. ~~185.~~ The January 2007 Confidential Offering Memorandum represented that: "It is anticipated that the primary business of the Partnership will be to make secured loans to the Borrower [Sun Capital]."

202. ~~186.~~ The January 2007 Confidential Offering Memorandum specifically represented that:

> **Pursuant to the Credit Agreement, the Borrower agrees to use the proceeds of the Loans to finance the borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic, or other healthcare related goods or services** (such receivables being referred to collectively as "**healthcare receivables**" payable by third-parties such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid ("**third-party payors**").
>
> Pursuant to the Credit Agreement, **loan proceeds that have not been used by the borrower to acquire Healthcare Receivables are to be held in a bank account (the "holding account") until they are used to acquire Healthcare Receivables or to make payments to the partnership**.

203. ~~187.~~ These representations were false and materially misleading. The January 2007 Confidential Offering Memorandum does not mention loan proceeds being used to purchase workers' compensation receivables, anticipated DSH payments, or to make unsecured advances to related-party distressed hospitals, as described above.

204. ~~188.~~ When the Confidential Offering Memorandum was prepared by Mayer Brown for use by Stable-Value II, Mayer Brown knew that Founding Partners' money was being used to finance unsecured loans, and to make advances to borrowers that were not secured by "healthcare receivables," making the Memorandum materially false and misleading.

205. At the time Mayer Brown drafted the Stable-Value II Confidential Offering Memorandum, it knew that some of the funds raised under the Stable-Value II Confidential Offering Memorandum would be used to finance the purchase of workers compensation receivables and DSH payments.

206. ~~189.~~ Mayer Brown knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

207. ~~190.~~ E&Y knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

208. ~~191.~~ The January 2007 Confidential Offering Memorandum further represented that "[t]he General Partner, officers of the General Partner, and the Partnership have no experience in evaluating, purchasing, billing, collecting or otherwise servicing Healthcare Receivables, and will rely completely on the Borrower."

209. ~~192.~~ In light of FPCM's lack of expertise, E&Y knew that FPCM and innocent decision-makers at FPCM and Founding Partners were relying on E&Y to perform a thorough and professional evaluation of the receivables purchased by Sun Capital.

210. ~~193.~~ E&Y and Mayer Brown knew that FPCM and Gunlicks would use the January 2007 Confidential Offering Memorandum to communicate the Founding Partners investment strategy and use of funds to Founding Partners limited partners and other innocent decision-makers.

211. ~~194.~~ The preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed to Founding Partners and to their limited partners by FPCM, Gunlicks, and Mayer Brown.

212. ~~195.~~ E&Y knew that the preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed by FPCM, Gunlicks, and Mayer Brown.

213. ~~196.~~ E&Y provided substantial assistance to the foregoing breaches of fiduciary duties by issuing an unqualified audit opinion on Stable-Value's 2006 financial statements on May 23, 2007, and by failing to issue an adverse audit opinion and going concern qualification on Stable-Value's 2007 financial statements despite its professional and contractual duties to do so.

XIII. MAYER BROWN CONCEALED THE DIVERSION AND MISUSE OF FOUNDING PARTNERS ASSETS DURING THE SEC'S FIRST INVESTIGATION, FROM 2002 TO 2007

214. The SEC conducted two investigations related to Founding Partners. The first investigation began in 2002 as "a non-public inquiry into" FPCM following an examination of the books and records of FPCM conducted pursuant to Section 204 of the Investment Advisers Act of 1940, and resulted in a "Corrected Order Instituting Administrative and Cease-And-Desist Proceedings, Making Findings, and And Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Section 203(e) of the Investment Advisers Act of 1940" in December 2007. The second investigation began in 2008 and resulted in the SEC civil action for the appointment of the Receiver in this case, and for other emergency relief.

215. In 2002, the SEC began investigating FPCM and Gunlicks for potential violations of various federal securities laws. Mayer Brown represented FPCM and Gunlicks before the SEC.

216. The SEC's first investigation from 2002 to 2007 was broad in scope, and the SEC specifically inquired about a wide range of potential violations of law, including breaches of fiduciary duty and fraud by Gunlicks and FPCM, and about material

misrepresentations and omissions in the Offering Materials, Disclosure Brochures, Performance Reports, and Audited Financial Statements "regarding the misappropriation and misuse of investor funds," among other subjects.

217. The SEC requested a broad range of documents from FPCM and Gunlicks, including without limitation the Offering Materials, draft and audited financial statements for the Founding Partners Funds and Sun Capital entities, Performance Reports, Credit and Security Agreements, and documents evidencing all loans between Founding Partners and Sun Capital. FPCM and Gunlicks produced documents to the SEC in response to several requests in 2002 and 2003, and Mayer Brown also produced and facilitated the production of documents by FPCM and Gunlicks to the SEC from 2004 through 2007.

218. Mayer Brown knew that the SEC's first investigation was broad in scope and included many potential violations of federal securities laws and material representations in the Offering Material, Performance Reports, audited financial statements, or disclosure brochures, including violations relating to the misuse and misrepresentations about the uses of investors' funds. Upon information and belief, Mayer Brown reviewed all of the SEC requests for information and all of the documents produced by or on behalf of FPCM and Gunlicks during the investigation.

219. Mayer Brown negotiated the eventual settlement with the SEC on FPCM's and Gunlicks' behalf from approximately late 2003 to December 2007.

220. While the first SEC investigation was continuing, and while Mayer Brown was attempting to negotiate a settlement of the SEC investigation, Mayer Brown was aware of the continuing and increasing diversion of Founding Partners assets to Sun

Capital for the purchase of workers compensation receivables, DSH payments, unsecured loans to acquire hospitals, and for other improper and undisclosed purposes.

221. Mayer Brown was aware of the ever increasing diversions of Founding Partners loans from several sources, including discussions with Gunlicks regarding proposed amendments to the Credit Agreements to include caps on the amounts of workers compensation receivables and DSH payments that had been purchased with Founding Partners assets, receiving documents from Founding Partners and the Sun entities to prepare the proposed amendments to the Credit Agreements and draft Offering Materials, and drafting loan and mortgage agreements to document previously made unsecured loans for the acquisition of hospitals and real estate.

222. Despite its knowledge that substantial amounts of Founding Partners assets were being diverted for improper uses, Mayer Brown never disclosed the improper uses of funds to the SEC, to the limited partners or investors, or to others who might have acted to protect the Funds and the investors against the fraud and diversion of Founding Partners assets.

223. Nor did Mayer Brown demand that FPCM and Gunlicks supplement the Offering Materials or Disclosure Brochure to disclose these uses of the funds, the facts and the risk associated with these uses of the funds, or withdraw from the representation and inform the limited partners and investors that the Offering Materials and Disclosure Brochure should not be relied upon.

224. Furthermore, the original settlement proposals required Founding Partners to retain an Independent Compliance Consultant to, among other things:

> Review and evaluate Founding Partners' policies, practices and procedures to determine their adequacy to detect and reasonably prevent Founding Partners and its associated persons from (1) violating the federal securities laws; (2) publishing, circulating or distributing any report filed with the Commission, which contain any untrue statement of a material fact, or which is otherwise false and misleading; and (3) publishing, circulating or distributing any confidential offering memoranda and any related written disclosure pertaining to the hedge funds, which contain any untrue statement of a material fact, or which is otherwise false and misleading;

225. Upon information and belief, in negotiations with the SEC, Mayer Brown told the SEC that FPCM and Gunlicks had corrected any deficiencies in the Offering Materials, performed a full inquiry into any alleged misconduct, and taken steps to address the weaknesses in internal controls or compliance policies.

226. During the summer of 2007, Mayer Brown continued to negotiate with the SEC regarding the requirement for an independent compliance consultant, or compliance monitor, and to represent to the SEC that no such relief was called for, because FPCM and Gunlicks had already taken all of the steps required to resolve the SEC's concerns in the investigation.

227. As a result of Mayer Brown's representations to the SEC and negotiations with the SEC, and the concealment from the SEC of the fraud that was already under way at FPCM, Founding Partners was not required to obtain an independent compliance consultant or compliance monitor.

228. In December 2007, the SEC issued a Corrected Order Instituting Administrative Cease and Desist Proceedings against FPCM and Gunlicks which settled the SEC's First Investigation.

229. Mayer Brown drafted a Cover Letter and mailed the Corrected Order and Cover Letter to all Founding Partners limited partners and investors in January 2008.

230. The Cover Letter represented to the limited partners and investors that the SEC investigation was "successfully resolved."

231. That representation was false, because Mayer Brown had only succeeded in delaying the discovery of the fraud by concealing it from the SEC and by failing to disclose to the SEC and to the Funds and their investors the truth about the use of the funds, which allowed the fraud to continue and the damages resulting from the fraud to increase.

232. The representation in the Cover Letter was also misleading because it omitted material information regarding the actual scope of and concerns expressed in the SEC's investigation, including the SEC's concerns about the misuse and misrepresentations concerning the actual uses of the funds, omitted any disclosure of the true facts concerning the misuse and misrepresentations about the uses of the investors' funds, and represented that Founding Partners was in compliance with federal laws and that the Offering Materials and other information provided to investors properly represented the Founding Partners loans and collateral.

233. The representation in the Cover Letter was also false and misleading because, when read together with the Corrected Order, it suggested that the true facts relating to the issues of concern to the SEC had been disclosed to the SEC and resolved by the Corrected Order.

XIV. ~~XIII.~~ UNABLE TO REPAY FOUNDING PARTNERS, SUN CAPITAL WENT OUT OF THE FACTORING BUSINESS AND DEFAULTED.

234. ~~197.~~ Eventually, due to the long delays in collection, outright inability to collect receivables and other misuses of Founding Partners' funds as described herein, Sun Capital was unable to service its debt to Founding Partners by making scheduled interest payments from revenue generated by its factoring operations.

235. ~~198.~~ In the fall of 2008, FPCM received a flood of redemption requests for Stable-Value, which totaled approximately $382 million (or 70% of the fund assets) by year-end. As a result of Sun Capital's undisclosed misuses and dissipation of Founding Partners investment, Founding Partners faced severe liquidity problems and could not satisfy the redemptions. As a result, in October 2008, Gunlicks informed Sun Capital that FPCM would not loan additional funds to Sun Capital.

236. ~~199.~~ In November 2008, Sun Capital told Gunlicks it was exiting the factoring business. Sun Capital's principals and Gunlicks discussed a future plan to raise capital to repay all Sun Capital borrowings from Stable-Value. At that time, Sun Capital's principals told Gunlicks they needed $8 to $12 million in working capital from Stable-Value to keep their hospitals operating. Subsequently, in approximately December 2008, Founding Partners provided Sun Capital with approximately $24 million in additional investor funds.

237. ~~200.~~ After receiving the approximately $24 million in additional Founding Partners funds, Sun Capital stopped making interest payments on its loans from Founding Partners, and defaulted.

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238. ~~201.~~ On information and belief, SCI and SCHI are incapable of repaying all or a substantial part of the loans from Founding Partners, and there is insufficient collateral available to cover the amounts due and owing Founding Partners' investors.

239. ~~202.~~ According to the books and records of Founding Partners, the amount of the loans (principal and interest) outstanding from Founding Partners to SCHI and SCI is in excess of $550 million.

XV. ~~XIV.~~ DUTIES E&Y AND MAYER BROWN OWED TO FOUNDING PARTNERS AND TO THEIR INVESTORS AND LIMITED PARTNERS.

A. E&Y's Duties Pursuant To Professional Auditing Standards.

240. ~~203.~~ E&Y is required by law to act as a public watchdog, a duty it breached repeatedly in connection with the Founding Partners audits.

241. ~~204.~~ E&Y owed to Founding Partners and their limited partners the duty to perform its audits in accordance with the Standards promulgated by Public Company Accounting Oversight Board ("PCAOB") and by the American Institute of Certified Public Accountants ("AICPA"). These Standards incorporate and include GAAS.

242. ~~205.~~ There are ten generally accepted auditing standards originally promulgated by the AICPA: three General Standards, three Standards of Field Work and four Standards of Reporting. Those standards are as follows:

(a) General Standards.

> 1. The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor.

2. In all matters relating to the assignment, an independence of mental attitude is to be maintained by the auditor or auditors.

3. Due professional care is to be exercised in the performance of the audit and the preparation of the report.

(b) Standards of Field Work.

1. The work is to be adequately planned and assistants, if any, are to be properly supervised.

2. A sufficient understanding of internal control is to be obtained to plan the audit to determine the nature, timing, and extent of tests to be performed.

3. Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

(c) Standards of Reporting.

1. The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.

2. The report shall identify those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.

3. Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.

4. The report shall contain either an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.

243. ~~206.~~ E&Y was required by GAAS to plan and perform its audits to obtain reasonable assurance that the financial statements being audited were free of material misstatement.

244. ~~207.~~ The requirement of independence embodied in the second general standard requires that "[t]o *be* independent, the auditor must be intellectually honest; to be *recognized* as independent, he must be free from any obligation to or interest in the client, its management, or its owners." AU § 220.03 (emphasis in original). Independence requires that auditors, such as E&Y, must avoid even the appearance or question that they are not wholly independent.

245. ~~208.~~ Moreover, "due professional care requires the auditor to exercise professional skepticism. … Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence." AU § 316.13. Thus, E&Y could not take statements made by FPCM, Gunlicks or the Sun Capital entities at face value.

246. ~~209.~~ In addition, in conducting an audit in accordance with generally accepted auditing standards, the auditor must recognize that "[m]anagement has a unique ability to perpetrate fraud because it is in a position to directly or indirectly manipulate accounting records and present fraudulent financial information. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively." AU § 316.08.

247. ~~210.~~ "During the course of the audit, the auditor may become aware of significant transactions that are outside the normal course of business for the entity, or that

otherwise appear to be unusual given the auditor's understanding of the entity and its environment. The auditor should gain an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets." AU § 316.66.

248. ~~211.~~ GAAS requires that the auditor "be aware of the possible existence of material related party transactions," AU § 334.04, and that the auditor "place emphasis on testing material transactions with parties he knows are related to the reporting entity." AU § 334.07.

249. ~~212.~~ GAAS requires that the auditor audit material related-party transactions with heightened skepticism because such transactions are presumed not to be arms-length transactions. With respect to related-party transactions, GAAS requires that the auditor apply procedures necessary to obtain satisfaction concerning the purpose, nature and extent of these transactions and their effect on the financial statements. Such procedures "should extend beyond inquiry of management." AU § 334.09.

250. ~~213.~~ According to GAAS, "[u]ntil the auditor understands the business sense of material transactions, he cannot complete his audit." AU § 334.09 n.6.

251. ~~214.~~ In its audits of Founding Partners' financial statements, E&Y was obligated by GAAS "to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited …." AU § 341.02.

252. ~~215.~~ E&Y also had a duty to comply with all of the Statements on Auditing Standards ("SAS"), which are issued by the Auditing Standards Board ("ASB") of the AICPA and incorporated into GAAS.

253. ~~216.~~ GAAS required that E&Y obtain an understanding of the business organization and operating characteristics of Founding Partners sufficient for E&Y to conduct its audits in accordance with GAAS.

254. ~~217.~~ As part of its audits, E&Y was thus required to read and become familiar with Founding Partners' organizational documents, including Founding Partners' partnership agreements, Offering Memoranda pertaining to the Funds and promotional materials provided to limited partners and investors pertaining to the Funds in order to familiarize itself with the business of Founding Partners. E&Y was also required to read and understand the prior year's financial statements of Founding Partners and the prior year auditor's working papers pertaining to the audits of those financial statements. E&Y in fact read all of these materials (and copies of them were maintained in E&Y's audit workpapers). E&Y thus knew that a key feature of investment in Founding Partners was the safety of the investment based upon FPCM's and Gunlick's assurance that the loans to SCHI were fully collateralized by short-term healthcare receivables payable by insurance companies or by the government and that any such receivables aged 120 days or more were either replaced or removed from any future lending base.

255. ~~218.~~ As a firm of Certified Public Accountants, E&Y was obligated to obtain sufficient evidential material to support its unqualified opinion. The auditors must gain an

understanding of the client's contracts, course of dealing and transactions with third parties. AU § 330.25.

256. ~~219.~~ E&Y, as an essential part of its audits of Stable-Value's financial statements, was required by GAAS to read and understand the SCHI Agreement and the SCI Agreement.

257. ~~220.~~ E&Y knew or should have known that SCHI's factoring did not comply with the SCHI Agreement.

258. ~~221.~~ Explanatory notes to the financial statements are an integral part of the financial statements, AU § 551.02. GAAS thus requires that the auditor implement sufficient audit procedures and obtain sufficient competent evidential matter to give the auditor reasonable assurance of the accuracy of representations and assertions made in the notes to the financial statements. In the case of its audits of the Founding Partners' financial statements, E&Y was thus obligated by GAAS to implement audit procedures and obtain sufficient, competent evidential matter to give E&Y reasonable assurance of the accuracy of, among other representations and assertions, the assertion in the Notes to Stable-Value's financial statements that SCHI would use investor funds loaned by Founding Partners to purchase healthcare receivables payable by third-party payors, such as insurance companies, Blue Cross/Blue Shield Plans and government programs such as Medicare and Medicaid, and that any underlying receivable aged beyond 120 days would be replaced or removed from future fundings.

259. ~~222.~~ GAAS further required that E&Y evaluate the impact on the Founding Partners financial statements of any failure of Founding Partners to comply with

investment restrictions imposed by contract or by governmental regulation. AICPA Audit and Accounting Guide, Audits of Investment Companies ("AIC") §§ 5.72-.75.

260. ~~223.~~ As auditors of the financial statements, E&Y was required by GAAS and otherwise to disclose or require disclosure of information material to the fair presentation of the financial position of Founding Partners.

B. Mayer Brown's Professional Duties As Counsel To Founding Partners.

261. ~~224.~~ Upon information and belief, Mayer Brown began providing legal services and advice to Founding Partners in late 1999, before a written engagement letter was signed.

262. ~~225.~~ In January 2000, Mayer Brown transmitted an engagement letter addressed to FPCM, including an undertaking to, among other things, provide services relating to lending facilities between Stable-Value's predecessor and Sun Capital Healthcare, Inc. ("SCHI"), which was to borrow monies from Stable-Value. Although Mayer Brown stated for conflict of interest purposes: "it is only [FPCM] who we will represent and not [FPCM's] subsidiaries, partnerships in which [FPCM is] a partner or related companies," Mayer Brown knew and intended that its work was created for use by Stable-Value, as the lender under the facilities. Only FPCM (through Gunlicks) and Mayer Brown executed that and the subsequent engagement letters.

263. Mayer Brown drafted the SCHI Credit Agreement, purportedly under the engagement letter and for reliance by Founding Partners and third parties, in which Mayer Brown declared it was counsel for Stable-Value.

264. Mayer Brown also declared that it was counsel for Stable-Value in rendering advice regarding the SCHI Credit Agreement on potential or actual amendments, rights and remedies, and enforcement of the agreement.

265. ~~226.~~ In January 2001, Mayer Brown sent a second engagement letter to FPCM, in which Mayer Brown agreed to perform services in connection with a participation agreement between Stable-Value's predecessor and Global Fund. Mayer Brown also agreed to draft supplements to an offering memorandum that were to be used to solicit investments in Stable-Value. In the January 3, 2001 letter, Mayer Brown stated: "we understand that [FPCM] has a conflict of interest in connection with the Participation Agreement, because [FPCM is] an affiliate of both the seller and the buyer of the participations. That conflict also affects us. You hereby waive any conflict of interest ..." Only Mayer Brown and FPCM executed the engagement letter; none of the Founding Partners executed the engagement letter.

266. ~~227.~~ In January 2002, Mayer Brown entered into another engagement agreement with FPCM, in which Mayer Brown agreed to provide services concerning a Credit and Security Agreement between Stable-Value and SCI. SCI purchased commercial accounts receivable with funds borrowed from ~~StableValue~~Stable-Value. Although Mayer Brown stated in the 2002 engagement agreement, concerning conflicts of interest, that: "it is only you who we will represent and not the Stable-Value Fund, your subsidiaries, any partnerships in which you are a partner or any related companies," Mayer Brown actually provided and intended its legal services for and legal advice on behalf of Founding Partners.

267. Just as Mayer Brown had stated in the SCHI Credit Agreement, Mayer Brown again declared that it was counsel to the lender (Stable-Value), and that it was also counsel for Stable-Value in rendering advice regarding the SCHI Credit Agreement on potential or actual amendments, rights and remedies, and enforcement of the agreement.

268. Mayer Brown knew and intended that Founding Partners and third parties would rely on those representations.

269. ~~228.~~ Mayer Brown drafted offering memoranda and/or supplements for Stable-Value and Stable-Value II, and other prepared documents in which Mayer Brown was identified as the attorneys for Stable-Value and Stable-Value II.

270. Mayer Brown initially started drafting the Stable-Value II Confidential Offering Memorandum in 2003, except for the Stable-Value II Confidential Offering Memorandum, Mayer Brown acknowledged in all drafts of the offering memorandum that it "has acted as legal counsel to the Partnership in connection with this offering of the Interests of the Partnership and the organization of the Partnership."

271. Mayer Brown knew and intended that Founding Partners and third parties would rely on those representations.

272. Upon information and belief, Stable-Value paid for the preparation of the Stable-Value Offering Memorandum Supplements, and the Stable-Value II Offering Memorandum.

273. In addition, Mayer Brown drafted numerous documents over several years in which it declared it was counsel to Stable-Value or Stable-Value II including a closing checklist for a draft credit and security agreement between SCHI and Stable-Value and

Stable-Value II, closing checklist for a loan from Stable-Value for the Bossier real estate transaction, closing checklist for a loan from Stable-Value for HLP Properties of Port Arthur, closing list for a draft credit and security agreement between Promise Healthcare and Stable-Value and Stable-Value II, and a closing list for a draft debt restructuring between Promise and Stable-Value and Global Fund.

274. Also, throughout 2007 and 2008 Mayer Brown repeatedly drafted Audit Letters that were sent to E&Y, in which Mayer Brown represented that it had represented Stable-Value, Hybrid-Value, and Stable-Value II.

275. Mayer Brown knew and intended that E&Y would use and rely on those representations.

276. Furthermore, Mayer Brown knew, because it received documents prepared by Founding Partners, that the Founding Partner Funds reasonably believed and were representing to investors and others that Mayer Brown was their counsel.

277. For example, Mayer Brown received a copy of Founding Partners' Key Mann Life Insurance Policy in 2004, which listed Mayer Brown as counsel to Stable-Value.

278. Although Mayer Brown knew that the Founding Partners Funds considered Mayer Brown to be the Funds' attorneys, Mayer Brown never attempted to tell Founding Partners or the investors that it did not represent the Funds.

279. ~~229.~~ In or about February 2008, Mayer Brown transmitted another engagement agreement to FPCM, which FPCM countersigned. In the 2008 engagement agreement, Mayer Brown agreed to "provide legal services to Founding Partners Capital

Management Company ... with respect to the you [sic] and the entities listed on Schedule I hereto." The entities listed by Mayer Brown on Schedule I were Founding Partners.

280. ~~230.~~ Over a period of many years, Mayer Brown was in fact the primary attorney for Founding Partners. Mayer Brown performed a wide range of services for Founding Partners, including, but not limited to: (a) advising on compliance with SEC regulations; (b) representing FPCM before the SEC; (c) drafting offering memoranda and/or supplements for Stable-Value and Stable-Value II; (d) drafting amendments to the SCHI Agreement that were never finalized; (e) advising and drafting documents for the transaction with Promise Healthcare; (f) advising and drafting documents in connection with the Bossier Land Acquisition Corp. transaction; (g) advising and drafting documents in connection with the HLP Properties and Lagniappe transactions; (h) drafting and/or advising for written amendments to the SCHI Agreement extending the maturity date; (i) negotiating with the Sun Capital Entities to change the terms of the parties' relationship; (j) advising on reorganization and bankruptcy issues; (k) providing tax advice; and (l) providing litigation services. Founding Partners considered Mayer Brown to be their primary counsel.

281. ~~231.~~ Conflicts of interest existed between FPCM and the Founding Partners because their respective interests diverged and because FPCM owed fiduciary duties to Founding Partners, and to the limited partners and investors. It was in FPCM's interest, but not in the interests of Founding Partners, to maximize the amounts loaned to SCHI and SCI in order to generate ever-increasing management fees paid to it by the Founding Partners, and to fund the increasing loans to SCHI and SCI. Mayer Brown recognized and

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acknowledged the conflicts of interest but, upon information and belief, Mayer Brown never received necessary waivers of conflicts of interest from any of the Founding Partners.

282. ~~232.~~ Among the services Mayer Brown performed for Founding Partners was the drafting of the "Confidential Offering Memorandum" dated January 2007 for Stable-Value II. The January 2007 Confidential Offering Memorandum grossly and materially misrepresented: (a) the nature of the collateral used to secure Founding Partners' loans to Sun Capital; (b) Sun Capital's use of the loan proceeds; and (c) the risks associated with investment in Founding Partners. In addition, as described in both the SCHI Agreement and SCI Agreement, Mayer Brown agreed to provide ongoing and continuous legal advice regarding proposed amendments to the agreements and Founding Partners' rights and remedies under the agreements.

283. ~~233.~~ Mayer Brown owed fiduciary duties to Founding Partners and to the limited partners and other innocent decision-makers, including the duties of due care, loyalty, and full disclosure of material facts. Founding Partners and the limited partners and other innocent decision-makers reposed trust and confidence in Mayer Brown and reasonably relied upon Mayer Brown's expertise and advice.

XVI. ~~XV.~~ MAYER BROWN BREACHED ITS PROFESSIONAL OBLIGATIONS TO FOUNDING PARTNERS.

284. ~~234.~~ Commencing in 2002, the SEC began investigating FPCM for violations of various federal securities laws. Mayer Brown represented FPCM before the

SEC and facilitated the production of documents by FPCM to the SEC. Mayer Brown also negotiated with the SEC on FPCM's behalf.

285. ~~235.~~ On or about December 3, 2007, FPCM and the SEC settled the allegations against FPCM resulting in the issuance of a Cease-and-Desist Order. FPCM was required to cease-and-desist violating Section 17(a) (2) of the Securities Act of 1933 which proscribes obtaining investments through the use of untrue statements of material fact.

286. ~~236.~~ In the Commission Action, the SEC alleged that FPCM had violated the terms of the December 3, 2007 Cease-and-Desist Order. Mayer Brown failed to advise Founding Partners' limited partners and other innocent decision-makers that the offering memoranda prepared by Mayer Brown included representations that Mayer Brown knew to be inaccurate, and failed to advise that the continued use of those offering memoranda violated, among other things, the Cease-and-Desist Order.

287. ~~237.~~ By the Fall of 2008, Mayer Brown knew that Founding Partners was faced with severe liquidity problems. In the Fall of 2008, Founding Partners received redemption requests of approximately $382 million. Mayer Brown knew about the redemption requests and knew that Founding Partners was unable to fully fund redemption requests. Mayer Brown advised FPCM that it need not fully honor investors' redemption requests.

288. ~~238.~~ Mayer Brown also advised FPCM not to waive its management fee in October 2008 despite the overwhelming rush of redemption requests; this illustrated the

patent conflict of interest between Mayer Brown's representation of FPCM and its representation and provision of legal services to the Founding Partners.

289. ~~239.~~ Mayer Brown drafted a communication to be transmitted to Founding Partners' limited partners stating that Founding Partners does "not anticipate fully meeting the existing December 31, 2008 withdrawal requests." Mayer Brown knew this statement was misleading because it knew at best Founding Partners was only going to pay a small fraction of each investor's redemption request.

290. ~~240.~~ Mayer Brown also wrote in the communication to limited partners that Founding Partners was "not currently experiencing abnormal illiquidity." Upon information and belief, Mayer Brown knew this statement was false and misleading.

291. ~~241.~~ Mayer Brown failed to properly disclose material negative information in the offering memoranda and/or supplements and other communications it prepared for Stable-Value and Stable-Value II.

292. ~~242.~~ In the offering memoranda and/or supplements drafted by Mayer Brown it was represented that Founding Partners would only lend for purchase of short-term accounts receivable defined to mean those accounts receivable expected to be collected or replaced within ~~150~~120 days.

293. ~~243.~~ The offering memoranda and/or supplements drafted by Mayer Brown represented that the loans to SCHI were fully secured by healthcare accounts receivable. Mayer Brown knew that was not true when the offering memoranda and/or supplements were prepared by Mayer Brown, and knew that was not true when it knew that the offering

memoranda and/or supplements were provided to limited partners and other innocent decision-makers.

294. ~~244.~~ Mayer Brown violated its duties to Founding Partners by:

(a) representing all of the Founding Partners entities despite having an unwaivable conflict of interest between representing FPCM and representing the Founding Partners which caused it to breach its duties of loyalty to all of its clients and caused it to provide advice that was counter to the interests of the Founding Partners;

(b) failing to adequately advise limited partners and other innocent decision-makers concerning risks in offering memoranda and/or supplements prepared or reviewed by Mayer Brown;

(c) failing to advise limited partners and other innocent decision-makers about known deviations from and breaches of contract, and about the Founding Partners' inadequate protections against default by the factoring companies; ~~and~~

(d) participating in and drafting limited partner communications that materially misrepresented and concealed the conflicts of interest, known deviations and from and breaches of contract, and other risks described above; and

(e) failing to either advise Founding Partners to supplement the Stable-Value Confidential Offering Memorandum and Stable-Value II Confidential Offering Memorandum to disclose the use of funds for workers compensation receivables, DSH receivables, and unsecured loans for hospital acquisitions and working capital, or advising the limited partners and investors that the Confidential

Offering Memorandums should no longer be relied upon and withdrawing from the representation of Founding Partners.

XVII. ~~XVI.~~ E&Y PERFORMED GROSSLY DEFICIENT AUDITS OF STABLE-VALUE'S 2006 AND 2007 FINANCIAL STATEMENTS.

A. 2006 Financial Statements.

295. ~~245.~~ In breach of the duties it owed to Founding Partners, E&Y performed grossly deficient audits of Stable-Value's 2006 financial statements. E&Y deviated in numerous respects from applicable professional standards referenced herein.

296. ~~246.~~ E&Y's Fort Lauderdale, Florida office performed ~~AUP's~~AUPs on Sun Capital's portfolio of accounts receivable at December 31, 2006. These procedures were performed by E&Y as a critical and essential part of the audit of Stable-Value's 2006 financial statements.

297. ~~247.~~ E&Y failed to plan or implement appropriate audit procedures to evaluate the ability of Sun Capital or the related entities to repay the Founding Partners' loans. This was a gross deviation from GAAS because the collectability of these receivables was a significant risk.

298. ~~248.~~ E&Y's workpapers do not indicate that E&Y even undertook an analysis of the need for an allowance or reserve for loan loss to account for the risk of non-collectability of the loans to Sun Capital. This was a gross deviation from GAAS and GAAP, especially in light of E&Y's actual knowledge of Sun Capital's activities and the substantially deteriorated quality of the collateral used to secure Founding Partners' loans to Sun Capital.

299. ~~249.~~ E&Y failed to plan or implement appropriate audit procedures to evaluate the collectability and value of the Sun Capital receivables, which served as collateral for the loans from Founding Partners. Indeed, E&Y inexplicably failed to identify collectability of the receivables as even being a significant risk. These were gross violations of GAAS.

300. ~~250.~~ E&Y failed to give appropriate planning consideration to the nature and concentration of receivables at Sun Capital. This was a gross deviation from GAAS because, as discussed above, the receivables were of vastly different natures and the collectability and timing of collectability of these receivables varied widely depending upon the type.

301. ~~251.~~ E&Y failed to plan its audit to determine the mix or nature of the receivables that collateralized the loans. Given that workers' compensation receivables and DSH payments were substantially different from typical healthcare receivables, as discussed above, E&Y's audit planning should have, but did not, take into consideration the differences in these receivables and the risks related to the character of these receivables.

302. ~~252.~~ E&Y failed to plan or implement any "subsequent events" procedures to evaluate the materially false and misleading January 2007 Confidential Offering Memorandum or its use to fraudulently maintain investments in Founding Partners and to deceive innocent Founding Partners' decision-makers by concealing the use of Founding Partners' loan proceeds and the true nature and value of the collateral securing those loans.

303. ~~253.~~ E&Y did nothing to evaluate the impact of the extremely high-risk advances from Sun Capital to Promise Healthcare hospitals or the collectability of the funds lent to Sun Capital by Founding Partners' investors or transferred to related parties as unsecured loans or "advances." E&Y issued a clean audit opinion and did not require disclosure of this highly inappropriate use of Founding Partners' funds, and did not require any allowance/reserve for loan loss to account for the probability that the Founding Partners' loans to Sun Capital were uncollectible in whole or in material part.

304. ~~254.~~ E&Y failed to appropriately evaluate Founding Partners' ability to continue in operation as a going concern for a reasonable period of time as required by GAAS. An appropriate going concern analysis was critical in light of the rapidly deteriorating quality of the receivables factored by Sun Capital and Sun Capital's outright misuse of Founding Partners' funds.

1. E&Y Failed to Plan and Implement Audit Procedures Taking Into Account Material Weaknesses In Internal Control.

305. ~~255.~~ A company's internal controls are processes implemented by a company's management to provide reasonable assurances regarding reaching goals in operations, accuracy of financial reports and compliance with applicable laws and regulations. The SEC defines internal controls as: "a specific set of policies, procedures, and activities designed to meet an objective … Controls have unique characteristics – for example, they can be: automated or manual; reconciliations; segregation of duties; review and approval authorizations; safeguarding and accountability of assets; preventing or detecting error or fraud."

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306. ~~256.~~ It is critical for auditors to understand and analyze a company's internal controls for purposes of planning the audits, assessing risks with various audit procedures and in performing the audits.

307. ~~257.~~ E&Y knew or should have known that there existed numerous material weaknesses in FPCM's and Founding Partners' internal controls, including but not limited to:

(a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;

(b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;

(c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

E&Y nonetheless did not properly notify Founding Partners of these material weaknesses as required by GAAS, and did not properly tailor or enhance its audit procedures to take into account these material weaknesses.

2. E&Y Violated GAAS Standards of Field Work in Numerous Ways.

308. ~~258.~~ In violation of GAAS, E&Y failed to maintain independence in mental attitude during the course of its audit due to its long and close relationship with Gunlicks, as described herein, and because of its relationship with Sun Capital and its desire to acquire new business from affiliates or entities related to Sun Capital as described herein.

309. ~~259.~~ In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of Stable-Value's loans to Sun Capital. E&Y merely confirmed the amount of the loans, and in violation of GAAS, merely assumed that the full amount was collectable.

310. ~~260.~~ In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of the receivables purchased by Sun Capital with Founding Partners' loan proceeds.

311. ~~261.~~ E&Y breached its professional duties in connection with the AUPs it performed on the receivables Sun Capital purchased by: (a) failing to advise Founding Partners that the procedures were grossly inadequate and were not useful for its audits; (b) negligently performing the procedures; and (c) negligently failing to integrate the procedures into the audit process. Indeed, E&Y adopted the procedures as its own and assumed full responsibility for them when it added to and deviated from the AUPs without executing new agreements.

312. ~~262.~~ In violation of GAAS, E&Y failed to design the AUPs it performed on the receivables Sun Capital purchased with Stable-Value loan proceeds to determine or evaluate the actual collectability and value of those receivables.

313. ~~263.~~ In its AUPs on the receivables Sun Capital purchased with Stable-Value's loan proceeds, E&Y merely confirmed on a sample basis the amount of the receivable and the fact that the amount was owed. But, E&Y did no analysis of the actual collectability of these receivables, in violation of GAAS.

314. ~~264.~~ In violation of GAAS, E&Y failed to plan or implement proper audit procedures to evaluate receivables Sun Capital purchased from Promise Healthcare or Success, both related parties, and failed to evaluate those transactions with heightened skepticism as required by GAAS.

315. ~~265.~~ In violation of GAAS, E&Y, in its evaluation of the receivables serving as collateral for the Founding Partners' loans, failed to make any distinction between the types of receivables factored by Sun Capital in the audit procedures that E&Y implemented. As a result, E&Y applied the same procedures to workers' compensation receivables as it did to DSH payments and to other healthcare receivables. This is a gross deviation from GAAS because these types of receivables are very different, as described above, both in the timing of their collectability and in the ability to collect the receivable, period.

316. ~~266.~~ E&Y failed to plan or implement appropriate audit procedures to determine whether Sun Capital's purchase of workers' compensation receivables and anticipated DSH payments was a violation of the SCHI Agreement and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

317. ~~267.~~ E&Y failed to plan or implement proper audit procedures to determine whether Sun Capital's loans to related parties, funded with Founding Partners' loan proceeds, were in violation of the SCHI Agreement or the SCI Agreement, and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

318. ~~268.~~ E&Y's ~~AUP's~~AUPs on the receivables purchased by Sun Capital were inadequate because they failed to sample a sufficient number of receivables to obtain a reasonably accurate portrayal of the character and composition of Sun Capital's receivables portfolio.

B. The Never-Completed 2007 Audit and Continuing Concealment of Sun Capital's Misuse of Founding Partners' Funds.

1. E&Y initially resigned as Founding Partners' auditor due to the extreme risk associated with the audit, but then decided to continue as auditor in order to attract business from Sun Capital-related companies.

319. ~~269.~~ In June 2007, shortly after the issuance of its unqualified audit opinion on Stable-Value's 2006 financial statements, E&Y decided to resign from its audit relationship with Founding Partners.

320. ~~270.~~ According to E&Y's workpapers, its decision to resign as Founding Partners' auditor was based upon at least the following risk factors:

> I. Lack of audited financial statements for Sun Capital to help support the validity and valuation of the loans from the Stable-Value fund to Sun Capital in connection with the audit of the Stable-Value fund.
>
> II. Credit risk of the loans to Sun Capital which represent 88% of the assets of the Stable-Value fund at December 31, 2006.
>
> III. Concern regarding the adequacy of the procedures and controls over the valuation of investments in private companies which represent 52% of the investments held by the Equity Fund as of December 31, 2006.
>
> IV. An ongoing SEC investigation of Founding Partners and William Gunlicks which was initiated in 2000, resulted in

> the issuance of a "Wells Notice" in December 2003, and was still ongoing at the time of our decision to resign.

321. ~~271.~~ E&Y's decision to resign was also motivated by, on information and belief, the unacceptable risks posed by the concentration of Founding Partners' assets at Sun Capital and Sun Capital's misuse of those assets as described herein.

322. ~~272.~~ E&Y did not at any time inform Founding Partners of the true and material reasons for its decision to resign, including the reasons set forth in the preceding paragraphs.

323. ~~273.~~ E&Y apparently did not inform Gunlicks and FPCM of its decision to resign until November 2007.

324. ~~274.~~ Nonetheless, in early 2008, Paul Sallwasser, the E&Y partner in E&Y's Fort Lauderdale, Florida, office who had performed and led E&Y's audits and ~~AUP's~~AUPs at Sun Capital, successfully lobbied partners in E&Y's professional practice group to allow E&Y, through its South Florida offices, to continue to audit the financial statements of Founding Partners, for fiscal year 2007.

325. ~~275.~~ Accordingly, E&Y was engaged to audit Stable-Value's financial statements for the year ended December 31, 2007.

326. Upon information and belief, William Shillington was the engagement partner and Zack Kraev was the manager for the 2007 audit.

327. ~~276.~~ E&Y's decision to continue auditing Stable-Value's financial statements for 2007 was motivated by its desire to foster and improve its relationship with and attract business from Sun Capital-related and affiliated entities.

328. ~~277.~~ Indeed, Sallwasser, in an E&Y memorandum dated January 3, 2008, in which he attempted to justify E&Y's continuance of its audit relationship with Founding Partners, argued that the engagement would be profitable and specifically observed that "it is not likely that we would be appointed as the auditor of Promise [Healthcare] if we are not the auditor of the Funds and Sun Capital."

329. ~~278.~~ E&Y's motivation to attract business from Sun Capital-related parties seriously compromised E&Y's independence in the course of its audit of Founding Partners' financial statements, in violation of GAAS.

330. ~~279.~~ On or about February 5, 2008, FPCM and E&Y entered into an agreement pursuant to which the performance of the audits for the year ended December 31, 2007 were to be conducted.

331. ~~280.~~ Days later, on February 12, 2008, E&Y attempted to include a limitation on liability, which further seriously compromised E&Y's independence in violation of GAAS. Founding Partners' records do not reflect a counter-signed copy of the February 12, 2008 letter and, even if signed, the limitation of liability is unenforceable.

2. E&Y's audit of Founding Partners 2007 financial statements was grossly deficient and intentionally prolonged so as to avoid issuance of an adverse audit opinion and restatement of Stable-Value's 2006 financial statements as required by GAAS and GAAP.

332. ~~281.~~ E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 was conducted by E&Y's Fort Lauderdale, Florida office, and AUPs on Sun Capital's portfolio of factored receivables in connection with that audit were likewise conducted by E&Y's Fort Lauderdale office.

333. ~~282.~~ E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 dragged on for well over a year until Gunlicks fired E&Y in 2009, shortly before Founding Partners was placed in the current receivership.

334. ~~283.~~ E&Y delayed its audit work in order to avoid issuing an opinion on Stable-Value's financial statements as of December 31, 2007. It knew or should have known that Stable-Value's financial statements did not comport with GAAP.

(a) Stable-Value's 2007 Financial Statements Continued the Concealment of Sun Capital's Misuses of Stable-Value's Investors' Funds.

335. ~~284.~~ Drafts of Stable-Value's financial statements for the fiscal year ended December 31, 2007 are included in E&Y's workpapers.

336. ~~285.~~ The 2007 Stable-Value financial statements audited by E&Y contained similar misrepresentations, and were materially false and misleading for essentially the same reasons as the 2006 financial statements.

337. ~~286.~~ Stable-Value's 2007 financial statements audited by E&Y failed to reveal that substantially material amounts of the receivables factored by SCHI using Stable-Value funds consisted of DSH payments, workers' compensation receivables and receivables aged beyond 120 days, and those financial statements likewise failed to reveal substantial and material unsecured loans or "advances" from Sun Capital to related-party hospitals using Founding Partners' funds.

338. ~~287.~~ Unlike prior years' financial statements, certain of the draft 2007 Stable-Value financial statements do contain vague reference to workers' compensation receivables and the longer collection period for those receivables. However, the financial

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statements contain no disclosure of the material amount of workers' compensation receivables being factored by Sun Capital or their ineligible nature.

339. ~~288.~~ The draft 2007 financial statements of Stable-Value also contain a disclosure that "[a]pproximately $218 million of the collateral is healthcare receivables that Sun Capital purchased from a group of twelve hospitals which are controlled by the owners of Sun Capital." Stable-Value's prior E&Y-audited financial statements contained no reference to Sun Capital's substantial and material purchases of healthcare receivables from related-party hospitals.

340. ~~289.~~ The draft 2007 financial statements of Stable-Value also contain no allowance or reserve for loan loss to reflect the risk of non-collectability of the Stable-Value loans to Sun Capital.

(b) E&Y Intentionally Prolonged its Audit of Stable-Value's 2007 Financial Statements in Order to Conceal E&Y's Own Misconduct.

341. ~~290.~~ E&Y did not issue a report or opinion on Stable-Value's 2007 financial statements.

342. ~~291.~~ E&Y prolonged its audit of Stable-Value's 2007 financial statements by requesting ever-increasing numbers of receivables to sample.

343. ~~292.~~ During its audit of Stable-Value's 2007 financial statements, E&Y again purported to perform AUPs on the collateral supposedly securing Stable-Value's loans to Sun Capital. E&Y issued an AUP report dated June 25, 2008, but without having performed procedures necessary to properly evaluate the collateral.

344. ~~293.~~ E&Y later insisted on increasing the sample size of receivables it sampled. E&Y did so ostensibly to get a more accurate picture of Sun Capital's portfolio of factored receivables. But this was merely a pretext in order to enable E&Y to significantly prolong the audit and delay issuance of an audit report and opinion. E&Y knew or should have known that the sample it initially requested from Sun Capital was grossly inadequate to enable E&Y to perform a GAAS audit of Stable-Value's financial statements or gain an accurate understanding of Sun Capital's portfolio of receivables.

345. ~~294.~~ E&Y was obligated by professional standards to issue a report and adverse opinion on Stable-Value's 2007 financial statements within a reasonable period of time.

346. ~~295.~~ E&Y's failure to issue an adverse audit opinion or disclaimer of an opinion, together with a going concern qualification, on Stable-Value's 2007 financial statements aided and gave substantial assistance to the continuing misconduct by Gunlicks, FPCM, and others.

347. ~~296.~~ E&Y knew that it was obligated by GAAS to issue an adverse opinion on Stable-Value's 2007 financial statements and to disclose all material facts that had been omitted from those financial statements. E&Y also knew that it was required by GAAS to issue a going-concern qualification on its audit opinion in which it revealed that substantial doubt existed as to Founding Partners' ability to continue in operation for a reasonable period of time.

348. ~~297.~~ E&Y also knew, during the course of its audit, or purported audit, of Stable-Value's 2007 financial statements, Stable-Value's E&Y-audited 2006 financial

statements were grossly and materially misstated and misleading, and that GAAP and GAAS required an immediate restatement of those financial statements. Yet in breach of the duties it owed to Founding Partners, E&Y required no such restatement and failed to disclose the need for any such restatement.

349. ~~298.~~ E&Y's failure and refusal to issue an audit report and opinion on Stable-Value's 2007 financial statements was motivated purely by E&Y's own pecuniary interests at the expense of Founding Partners. E&Y knew that its issuance of an adverse or qualified audit opinion on Stable-Value's 2007 financial statements would serve, at least in part, to highlight the false and misleading nature of Stable-Value's 2006 financial statements and E&Y's deficient audit of those financial statements, and would underscore the need to restate those financial statements. All of this would at least expose E&Y's grossly deficient audit of Stable-Value's 2006 financial statements.

350. ~~299.~~ In addition, E&Y was required, and had a continuing obligation pursuant to GAAS, to follow the procedures set forth in AU § 561, including insistence that FPCM and Gunlicks make appropriate disclosure of the facts demonstrating that the 2006 financial statements were materially misstated and misleading and should not be relied upon. If FPCM and Gunlicks refused to make such disclosures, AU § 561.08 required that E&Y:

(a) notify the client that E&Y's audit report must no longer be associated with the 2006 financial statements;

(b) notify regulatory agencies that E&Y's audit report on the 2006 financial statements should no longer be relied upon; and

(c) notify each person known to the auditor to be relying on the financial statements that his report should no longer be relied upon.

But E&Y failed to follow any of these procedures.

351. ~~300.~~ E&Y was thus willing to allow the loss of hundreds of millions of dollars of Founding Partners' investors' funds in order to avoid revealing its own audit failures and misrepresentations.

352. ~~301.~~ During the course of its audit work on Stable-Value's draft 2007 financial statement, E&Y knew that the quality of Stable-Value's portfolio of receivables continued to deteriorate.

353. ~~302.~~ Sun Capital's financial statements show that by February 2009, it held approximately $53 million of workers' compensation receivables. At recent rates of collection, these workers' compensation accounts receivable will not be fully collected for over 18 years (or until 2028), if ever.

354. ~~303.~~ As of February 2009, Sun Capital had at least $63 million in related-party unsecured loans to Promise Healthcare hospitals funded by assets received from Stable-Value. In addition, Sun Capital had outstanding a $450,000 unsecured loan, likewise funded with Stable-Value investor funds, to Sun Capital's CFO for the purchase of a house. These unsecured loans to related parties, and many others like them, constituted a substantial and material portion of the collateral securing Stable-Value's loans to Sun Capital.

355. ~~304.~~ As of February 2009, Sun Capital held approximately $158 million in DSH payments.

356. ~~305.~~ Moreover, Sun Capital's collateral report for December 31, 2008 indicates that approximately $136 million of Sun Capital's receivables, including workers' compensation and DSH payments, had been outstanding for more than 150 days, but were not replaced with "fresh" receivables. Furthermore, Sun Capital had approximately $40 million in additional workers' compensation receivables and anticipated DSH payments less than 120 days old, most of which by their very nature Sun Capital could not and would not likely collect within 150 days.

3. E&Y Performed a Grossly Deficient Audit of Stable-Value's 2007 Financial Statements.

357. ~~306.~~ During the course of its audit of Stable-Value's 2007 financial statements, E&Y knew or should have known that Sun Capital was incapable of servicing its debt to Stable-Value and was incapable of repaying the principal balances of Founding Partners' loans to Sun Capital. E&Y thus knew that Stable-Value's loans to Sun Capital were at extreme risk.

358. ~~307.~~ During the course of its audit of Founding Partners' 2007 financial statements, E&Y knew that the risk of Sun Capital defaulting on the Stable-Value loans was extreme.

359. ~~308.~~ During the course of its prolonged audit of Stable-Value's 2007 financial statements, E&Y also knew that there was and had been no disclosure of the substantial risks to which Founding Partners' funds were exposed due to the substantial deterioration of the quality of receivables being factored by Sun Capital and because of Sun Capital's outright misuse of Founding Partners' funds.

360. ~~309.~~ Indeed, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that there was no disclosure by Gunlicks, FPCM, or anyone else for that matter, that Stable-Value's 2006 financial statements were substantially and materially false and misleading.

361. ~~310.~~ Moreover, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that Gunlicks and FPCM were using the January 2007 Confidential Offering Memorandum, with its grossly and materially false and misleading representations, and with its use of E&Y's name to add credibility to the document, to conceal sun Capital's actual uses of Founding Partners' loan proceeds.

362. ~~311.~~ E&Y failed to properly tailor, enhance, or add audit procedures to take into account serious and material weaknesses in FPCM's and Founding Partners' internal controls, including at least the following:

(a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;

(b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;

(c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

363. ~~312.~~ Upon information and belief, E&Y failed to emphasize or critically analyze anticipated DSH payments in its analysis of the factored receivables and credit risk.

364. ~~313.~~ As in prior years, E&Y violated GAAS by failing to properly plan and implement audit procedures to evaluate the collectability of Stable-Value's loans to Sun Capital.

365. ~~314.~~ As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's need for an allowance or reserve for loan loss.

366. ~~315.~~ As in prior years, E&Y failed to adequately plan and perform its audit to properly evaluate and understand the value, including an analysis of collectability, of the collateral securing Stable-Value's loans to Sun Capital.

367. ~~316.~~ As in prior years, E&Y's procedures applied to receivables factored by Sun Capital at December 31, 2007 were inadequate to enable E&Y to evaluate the collectability of the receivables. This was in violation of GAAS.

368. ~~317.~~ As in prior years, E&Y failed to properly take into consideration ~~he~~the fact that material amounts of the receivables factored by Sun Capital with Stable-Value loan proceeds were receivables Sun Capital purchased from entities related to Sun Capital.

369. ~~318.~~ E&Y abandoned its professional skepticism and failed to properly plan and implement audit procedures to evaluate the collectability of DSH and workers compensation receivables.

370. ~~319.~~ E&Y failed to design or perform tests to focus specifically on the workers' compensation receivables or anticipated DSH payments. E&Y personnel were

not versed with the unique and risky nature of workers' compensation receivables and DSH payments.

371. ~~320.~~ In its AUPs, performed in connection with the December 31, 2007 audit, E&Y erroneously double-counted accrued fees as collateral. E&Y advised Founding Partners of its error only after it learned the SEC was investigating Founding Partners in early 2009.

372. ~~321.~~ E&Y failed to properly take into consideration the fact that the hospitals that factored accounts receivable with SCHI were financially distressed or insolvent and thus collectability of certain receivables was significantly impaired.

373. ~~322.~~ E&Y failed to gain an understanding of Sun Capital's methods of valuing or monitoring the factored accounts receivable.

374. ~~323.~~ E&Y improperly relied upon accounts receivable confirmations from parties related to SCHI.

375. ~~324.~~ E&Y failed to properly evaluate and determine whether Sun Capital was using the proceeds of the loans from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and the SCI Agreement, and inconsistent with what was represented to investors in Stable-Value's financial statements and Stable-Value and Stable-Value II's Confidential Offering Memoranda and monthly performance reports.

376. ~~325.~~ E&Y failed to disclose that the Sun Capital entities were using loan proceeds from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and SCI Agreement, and inconsistent with what was presented to investors in

Stable-Value's financial statements and Stable-Value and Stable-Value II's confidential offering memoranda and monthly performance reports.

377. ~~326.~~ As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's ability to continue in operation as a going concern for a reasonable period of time.

378. ~~327.~~ After E&Y was finally terminated in February 2009, it required Founding Partners to agree that its new auditor could only review the audit workpapers for use in preparing its 2007 and 2008 audits and that the new auditor could not serve as an expert witness against E&Y.

XVIII. ~~XVII.~~ E&Y AND MAYER BROWN MADE AFFIRMATIVE MISREPRESENTATIONS TO FOUNDING PARTNERS' LIMITED PARTNERS AND OTHER INNOCENT DECISION-MAKERS.

379. ~~328.~~ The "Agreement of Limited Partnership" of Stable-Value, which as alleged above, E&Y was required to read and understand pursuant to GAAS, specifically provided that the limited partners would be provided financial statements "audited by the partnership's independent certified public accountants" written one hundred twenty (120) days after the end of each fiscal year. Stable-Value's confidential offering memoranda similarly represented that investors would be provided audited financial statements within one hundred twenty (120) days of the end of each fiscal year. E&Y and Mayer Brown thus knew that Founding Partners audit opinions were being supplied to the limited partners and other innocent decision-makers of Founding Partners.

380. ~~329.~~ E&Y and Mayer Brown were aware that the majority of Founding Partners' collective assets were inextricably tied to the factoring of accounts receivable by the Sun Capital entities.

381. ~~330.~~ E&Y's report on Stable-Value's 2006 financial statements is dated May 23, 2007, and is addressed to "The Partners" of Stable-Value. In its audit report, E&Y made numerous misrepresentations.

382. ~~331.~~ E&Y's reports on Stable-Value's 2004 and 2005 financial statements are dated June 6, 2005, and June 23, 2006, respectively, and are addressed to "The Partners" of Stable-Value. In its audit reports, E&Y also made numerous misrepresentations substantially similar to those in its report on Stable-Value's 2006 financial statements.

383. ~~332.~~ In its audit reports, E&Y represented that it was an "independent" auditor of the financial statements. This representation was false and materially misleading.

384. ~~333.~~ In fact, E&Y was not independent and had compromised its independence in numerous ways, including at least the following: (a) E&Y's professional skepticism and independence were compromised by its long relationship with Sun Capital and, as alleged below, its desire to attract business from Sun Capital and related and affiliated entities; and (b) E&Y had a long personal relationship with Gunlicks, having provided at least tax services to him and his family for nearly 25 years.

385. ~~334.~~ In its reports, E&Y represented that "[w]e conducted our audit in accordance with auditing standards generally accepted in the United States." This representation was false and materially misleading.

386. ~~335.~~ As alleged herein, E&Y did not conduct GAAS audits of Stable-Value's financial statements. Indeed, as alleged herein, E&Y was guilty of gross deviations from basic GAAS.

387. ~~336.~~ E&Y further specifically represented that "[w]e believe that our audit provides a reasonable basis for our opinion." This representation was false and materially misleading. E&Y's audits were so deficient and so substantially deviated from the requirements of professional auditing standards that no reasonable auditor could believe that the audit provided any reasonable basis for an opinion on the financial statements of Stable-Value.

388. ~~337.~~ In fact, as alleged above, E&Y documented in its own workpapers its actual knowledge that the financial statements of Stable-Value were grossly and materially misstated and misleading. E&Y thus had no basis for issuing unqualified audit opinions on those financial statements.

389. ~~338.~~ E&Y further represented in its audit report on Stable-Value's 2006 financial statements that:

> In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Founding Partners Stable-Value Fund, L.P. at December 31, 2006 and the results of its operations, the changes in its partners' capital, and its cashflows for the year then ended in conformity with U.S. generally accepted accounting principles.

E&Y's audit reports on Stable-Value's 2004 and 2005 financial statements contain a substantially similar representation that in E&Y's opinion, the financial statements conformed with U.S. GAAP. These representations were false and materially misleading. As alleged above, Stable-Value's 2004, 2005, and 2006 financial statements were grossly and materially misstated and misleading in numerous respects.

390. ~~339.~~ As documented in E&Y's workpapers, E&Y's calculated "Planning Materiality" for its audit of Stable-Value's 2006 financial statements was $2,867,000, with "Tolerable Error" of $1,433,000. The amount of Founding Partners' funds which Sun Capital improperly used to purchase workers' compensation receivables, DSH payments and to make unsecured loans or advances to entities related to Sun Capital, exceeds this materiality threshold by many magnitudes. In fact, E&Y knew that Sun Capital had improperly used at least $129.4 million (over 45 times E&Y's Planning Materiality) of the funds loaned to Sun Capital for these purposes. This amount was over half the purported $253.9 million fund value of the loans to Sun Capital outstanding at 31 December 2006 as reported in Stable-Value's 2006 E&Y-audited financial statements.

391. ~~340.~~ As discussed above, E&Y actually knew and understood that Stable-Value's 2006 financial statements were grossly and materially misleading.

392. ~~341.~~ In the alternative, E&Y acted recklessly and consciously avoided knowing that Stable-Value's 2006 financial statements were materially misleading and misstated.

393. ~~342.~~ GAAS required E&Y to include in its audit reports a "going concern" qualification indicating that substantial doubt existed as to Founding Partners' ability to

continue in operation for a reasonable amount of time. But E&Y failed to include any such qualification in its audit reports, thus further concealing Sun Capital's misuse of Founding Partners' funds and the undisclosed substantial risks to which those funds were exposed.

394. ~~343.~~ By failing to disclose or require disclosure of the material facts of the dramatic deterioration in the quality of the collateral used to secure loans to SCHI and Sun Capital's outright misuse of Founding Partners' investor funds exposed investor funds to substantial and material risk of loss, E&Y and Mayer Brown concealed the breaches of duty of FPCM, Gunlick, Sun Capital, and others; Mayer Brown failed to act when required to do so by virtue of its professional obligations to Founding Partners; E&Y failed to act when required to do so by virtue of its audit engagement and by virtue of the provisions of GAAS and GAAP.

XIX. ~~XVIII.~~ INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS REASONABLY RELIED ON THE MATERIAL MISREPRESENTATIONS AND OMISSIONS MADE TO THEM, INCLUDING E&Y'S UNQUALIFIED AUDIT OPINIONS, AND E&Y'S AND MAYER BROWN'S SILENCE IN THE FACE OF AN AFFIRMATIVE DUTY TO SPEAK.

395. ~~344.~~ Investors and limited partners of Founding Partners, including the Assignors, reasonably relied on the representations and omissions contained in the offering materials, including without limitation the Offering Memoranda and financial statements, and based their decisions to invest and to continue their investments on those representations and omissions. The materials relied upon by the investors and limited partners reflected the current materials available at the time of their respective investments in Founding Partners. The investors and limited partners were unaware that

representations and omissions in the materials and information provided to them at the time were materially false and misleading.

396. ~~345.~~ Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners relied on E&Y's unqualified audit opinions on Founding Partners' financial statements in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

397. ~~346.~~ Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners also relied on E&Y's and Mayer Brown's silence when E&Y and Mayer Brown were affirmatively obligated, as described above, to inform those innocent decision-makers that Founding Partners' financial statements were materially false and misleading; that E&Y's audit opinions should not be relied upon, and of the true facts regarding Sun Capital's use of Founding Partners' funds, including but not limited to the true character and composition of Sun Capital's portfolio of receivables serving as collateral for Founding Partners' loans. In reliance upon such silence, the innocent decision-makers refrained from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

398. ~~347.~~ It was reasonably foreseeable to E&Y and Mayer Brown that limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners would rely upon E&Y and Mayer Brown in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital, and that as a result of such reliance, Founding Partners' assets would be lost.

XX. THE ASSIGNORS WERE DAMAGED AS A RESULT OF THEIR REASONABLE RELIANCE UPON THE MATERIAL MISREPRESENTATIONS AND OMISSIONS IN THE OFFERING MATERIALS, AUDITED FINANCIAL STATEMENTS, DISCLOSURE BROCHURES, AND OTHER DOCUMENTS PREPARED BY OR WITH THE ASSISTANCE OF ERNST & YOUNG AND MAYER BROWN

399. As discussed above, Plaintiff is the Assignee of claims from individual assignors who invested in the Founding Partners Funds. As shown below, each assignor received, read and relied upon various documents prepared and sent to them by Founding Partners and by Defendants, including material misrepresentations and omissions. Each of the assignors was injured, in an amount to be proved at trial, as a direct and proximate result of its reasonable reliance upon such material misrepresentations and omissions.

400. Each assignor provided an unconditional assignment of its claims against E&Y and Mayer Brown to the Receiver, and any proceeds from the prosecution of those claims are for the benefit of the receivership.

A. E&Y And Mayer Brown Prepared And Knowingly Assisted With The Preparation Of False And Misleading Documents, Knowing They Would Be Sent To And Relied Upon By Investors

401. The Stable-Value offering materials (including the Stable-Value 1996 Confidential Offering Memorandum, and June 2000 and May 2002 Confidential Supplements to the Offering Memorandum) were sent to all prospective investors in Stable-Value Fund prior to the investment. Mayer Brown prepared both Supplements.

402. Founding Partners Disclosure Brochure Form ADV Part II was sent to all prospective investors in Stable-Value Fund and Stable-Value Fund II prior to the

investment. Mayer Brown reviewed and assisted in the drafting of the Disclosure Brochures.

403. Founding Partners 2003 Update Memorandum, including the 2004 Founding Partners 2004 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value on 15 April 2004, and the 2004 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 April 2004 to 31 December 2004. Mayer Brown reviewed and assisted in the drafting of the document.

404. Stable-Value 2003 Audited Financial Statements were sent to all Stable-Value investors on 9 August 2004. E&Y audited the financial statements.

405. Founding Partners 2004 Update Memorandum Including the Founding Partners 2005 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value on 23 March 2005, and the 2005 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2005 to 31 December 2005. Mayer Brown reviewed and assisted in the drafting of the document. Upon information and belief, Mayer Brown reviewed all such company disclosures before they were sent out.

406. Stable-Value 2004 Audited Financial Statements were sent to all investors in Stable-Value no later than October 2005. E&Y audited the financial statements.

407. Founding Partners 2005 Update Memorandum, including the Founding Partners 2006 Disclosure Brochure Form ADV Part II, was sent to all investors in Stable-Value in April 2006, and the 2006 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2006 to 31 December 2006. Upon

information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

408. Upon information and belief, Stable-Value 2005 Audited Financial Statements (signed 6/23/06) were sent to all investors in Stable-Value no later than July 2006. E&Y audited the financial statements.

409. Stable-Value II Confidential Offering Memorandum was sent to all potential investors in Stable-Value II prior to the investment. Mayer Brown drafted the Stable-Value II Offering Memorandum.

410. Founding Partners 2006 Update Memorandum including the Founding Partners 2007 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value in May 2007, and the 2007 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2007 to 31 December 2007. Upon information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

411. Upon information and belief, Stable-Value 2006 Audited Financial Statements were sent to all Stable-Value investors in June 2007. E&Y audited the financial statements.

412. SEC Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, and Cover Letter were mailed to investors in all of the Founding Partners Funds on 3 January 2008, and were mailed to all potential investors in the Founding Partners Funds until 31 December 2008. Mayer Brown negotiated the terms of the Corrected Order, and drafted the Cover Letter.

413. 2007 Update Memorandum including 2008 Disclosure Brochure Form ADV Part II was sent to all investors in Stable-Value in April 2008, and the 2008 Form ADV Part II Disclosure Brochure was mailed to all potential investors from 1 January 2008 to 31 December 2008. Upon information and belief, Mayer Brown reviewed and assisted in the drafting of the document.

414. The documents above were sent to investors and potential investors to inform the current and prospective investors about the material aspects of their investment in the Founding Partners Funds, and with the intent that they would rely upon the material representations in the documents.

B. The Documents Prepared by E&Y And Mayer Brown And Sent To The Assignors Contained Material Misrepresentations And Omissions

415. The Stable-Value 1996 Confidential Offering Memorandum and Confidential Supplements represented

> "Under a credit and security agreement (the "Credit and Security Agreement") to be entered into between the Partnership and Sun Capital Healthcare, Inc. (the "Borrower"), the Partnership will make loans ("Loans") to the Borrower. Pursuant to the Credit and Security Agreement, the Borrower agrees to use the proceeds of the Loans to finance the Borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic or other health care related goods or services (such receivables being referred to collectively as "Health Care Receivables") payable by third parties (the "Third Party Payors") such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid. Pursuant to the Credit and Security Agreement, Loan proceeds that have not been used by the Borrower to acquire Health Care Receivables are to be held in a bank account (the "Holding Account") until they are used to acquire Health Care Receivables or to make payments to the Partnership."

416. In addition, the Stable-Value Offering Memo and Supplements represented that Stable-Value would make loans only "to the Borrower under the Credit and Security Agreement based on what are reported to be the Net Collectible Amounts of Eligible Receivables…" and that Eligible Receivables were those that satisfied criteria "including that fewer than one hundred twenty (120) days have passed since the date on which the applicable services were provided by the applicable Seller to the applicable patient."

417. These representations were false, because, as described in Section X and XII(A) and XII(A) above, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the represented short-term "Eligible Receivables," because (as described above) they take substantially longer to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. DSH payments were also materially different than the short-term "Eligible Receivables" described in the offering memorandum, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement and were materially different than the short-term "Eligible

Receivables" represented in the Offering Memorandum and Supplements, because they were a high risk use of Stable-Value funds and were not secured by receivables at all.

418. The Founding Partners Disclosure Brochure Form ADV Part II dated 1 April 2004 represented

> The Stable-Value Fund's objective is to employ an investment strategy that has low to no correlation to the equity and bond markets. The Stable-Value Fund's assets, through a security investment in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible healthcare receivables that are the payment obligation of investment grade U.S. insurance companies, such as, Blue Cross/Shield plans and U.S. government healthcare agencies, like Medicare and Medicaid. The Fund may also finance the purchase, at a discount, of certain pre-qualified and verified commercial receivables, which are the payment obligations of US companies and US government entities. Default insurance is provided on the non-US government receivables by the largest credit insurer, rated A++ by A.M. Best, of commercial trade receivables. The loans are secured through enforceable UCC-1 filings (liens) on all receivables.

419. The Disclosure Brochure Form ADV Part II encouraged investors to look to the Confidential Offering Memorandums of the relevant funds for disclosure of "possibilities for conflict of interest and inherent risks, which are necessary to make an informed decision by the advisory client."

420. These representations were false and misleading, for the same reasons the representations in the Stable-Value Offering Memo and Supplements (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 to purchase DSH receivables and

un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible healthcare receivables" as represented in the Disclosure Brochure and Offering Memorandum and Supplements, because they take substantially longer to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. DSH payments were also materially different than the short-term "eligible healthcare receivables" described in the Disclosure Brochure and Offering Memorandum, because they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital ends up in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement, and were materially different than the short-term "eligible healthcare receivables" represented in the Disclosure Brochure and Offering Memorandum, because they were a high risk use of Stable-Value funds and were not secured by receivables at all, as was represented in the Disclosure Brochure, Offering Memorandum and Supplements.

421. The 2003 audited financial statements represented that:

> "Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers."

422. The 2003 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

423. Regarding the SEC investigation, the 2003 Audited Financials represented that "[t]he General Partner and the Staff are discussing a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

424. These representations were false and misleading, because (as described in Section X and XII(A) above) starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering

Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

425. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws.

426. The Founding Partners 2004 Update Memorandum including the Founding Partners 2005 Disclosure Brochure Form ADV Part II represented:

> The Stable-Value Fund's investment objective is to achieve above-average rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans or U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation requirements, as described in the Stable-Value Fund's Offering Memorandum.

427. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade

healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

428. The Stable-Value 2004 Audited Financial Statements represented

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

429. The 2004 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

430. Regarding the SEC investigation, the 2004 Audited Financials represented that "[t]he General Partner and the Staff are discussing a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

431. In addition, the 2004 Audited Financials represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

432. These representations were materially false, because (as described in Section X and XII(A) above) starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering

Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

433. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

434. Founding Partners 2005 Update Memorandum including the Founding Partners 2006 Disclosure Brochure Form ADV Part II represented, like the 2005 Disclosure Brochure, that

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influence by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund's Offering Memorandum.

435. In addition, the 2006 Disclosure Brochure encouraged limited partners and investors to refer to the offering memorandums of the funds "[f]or more information on the overall investment strategies, terms, risk factors and fee structure…."

436. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers

compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

437. The Stable-Value 2005 Audited Financial Statements represented:

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue

Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

438. The 2005 Audited Financials also represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

439. Regarding the SEC investigation, the 2005 Audited Financials represented that "[t]he General Partner and the Staff have discussed a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving Stewards & Partners Ltd. (Stewards")."

440. In addition, the 2005 Audited Financials represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

441. These representations were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables.

Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

442. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the

use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

443. The Stable-Value Fund II Confidential Offering Memorandum represented:

> Pursuant to the Credit Agreement, the Borrower agrees to use the proceeds of the Loans to finance the borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic, or other healthcare related goods or services (such receivables being referred to collectively as "healthcare receivables") payable by third-parties such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid ("third-party payors"). Pursuant to the Credit Agreement, Loan proceeds that have not been used by the borrower to acquire Healthcare Receivables are to be held in a bank account (the "holding account") until they are used to acquire Healthcare Receivables or to make payments to the partnership.

444. In addition, the Stable-Value II Offering Memorandum represented that the primary business of the fund would be making loans to SCHI secured by eligible healthcare receivables that met certain criteria including the age of the receivables.

445. These representations were false and misleading, because (as described in Section X and XII(A) and (C) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used

to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X and XII(A) and (C)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

446. The Founding Partners 2006 Update Memorandum including the Founding Partners 2007 Disclosure Brochure Form ADV Part II represented, like the 2006 Disclosure Brochure, that

> The Stable-Value Fund's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund's Offering Memorandum. The Stable-Value Fund does not employ leverage.

447. Similarly, with regard to Stable-Value II, the Disclosure Brochure represented that

> The Stable-Value Fund II's investment objective is to achieve above average to superior risk-adjusted rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Stable-Value Fund II is designed to accomplish this objective through the implementation of a stable value investment strategy that has low to no correlation to the equity and bond markets. The majority of the Stable-Value Fund II's assets, through a security investment provided in the Loan and Security Agreement, are invested to finance the purchase, at a discount, of eligible investment grade healthcare receivables that are the payment obligation of U.S. insurance companies, Blue Cross / Blue Shield plans and U.S. government health care agencies such as Medicare and Medicaid. The risks associated with the investment and lending process are not influenced by the market, but are related to extensive contractual documentation, valuation and validation requirements, as described in the Stable-Value Fund II's Offering Memorandum. Leverage may be employed up to a 1 to 1 ration to enhance the absolute return.

448. In addition, the 2007 Disclosure Brochure encouraged limited partners and investors to refer to the offering memorandums of the funds "[f]or more information on the overall investment strategies, terms, risk factors and fee structure…."

449. These representations were false and misleading for the same reasons the Stable-Value Offering Memorandum and Supplements were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make unsecured loans for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the short-term "eligible investment grade healthcare receivables" as represented in the Disclosure Brochure and Offering Materials, because (as described above) they take substantially longer than 120 days collect, and many of them were purchased in bulk which eliminated SCHI's ability to return an uncollectible amounts. Furthermore, the workers compensation receivables were un-adjudicated and not merely subject to contractual documentation requirements. DSH payments were also materially different than the short-term "eligible investment grade healthcare receivables" described in the Disclosure Brochure and Offering Materials, because (as described above in Section X and XII(A)) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI

Agreement and SCI Agreement. Also, they were materially different than the short-term "eligible investment grade healthcare receivables" represented in the Disclosure Brochure and Offering Materials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Disclosure Brochure and Offering Materials.

450. The Stable-Value 2006 Audited Financial Statements represented

> Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

451. In addition, the Audited Financials represented that "[t]he individual underlying healthcare and commercial trade receivables, and additional Borrowers assets, will serve as collateral for the loans to the Borrowers," and that "[a]ny underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from future fundings to the healthcare providers."

452. Furthermore, with respect to the SEC investigation, the Audited Financials represented that "[t]he General Partner and the Staff have discussed a number of issues, but conversations with the Staff have focused on certain investments made in Sovereign Assurance company, Limited ("Sovereign Assurance") and the relationships involving the Company."

453. As to the proposed settlement with the SEC, the Audited Financials also represented that "[t]he General Partner's and Gunlicks's tentative agreement with the Staff

provides that the Staff will recommend that the SEC seek: (1) cease-and-desist order against the General Partner from future violations of the federal securities laws: (2) cease-and-desist order against Gunlicks from causing future violations of the federal securities laws:…."

454. These representations were false and misleading, because (as described in Section X and XII(A) above) were false and misleading. They did not disclose that, starting in 2003 SCHI began diverting Stable-Value funds to make loans which were not secured by receivables for the acquisition of troubled hospitals, and in 2004 were used to purchase DSH receivables and un-adjudicated workers compensation receivables. Workers compensation receivables were materially different than the 120 day eligible healthcare receivables described in the Audited Financials and the Offering Materials, because (as described above) they take substantially longer than 120 days to collect, and many of them were purchased in bulk which eliminated SCHI's ability to return any uncollectible amounts. Furthermore, they were un-adjudicated claims, so they were also subject to the legal process which is different than the healthcare receivables which are only subject to a contractual obligation. DSH payments were also materially different than the 120 day eligible healthcare receivables described in the Offering Materials and Audited Financials, because (as described above in Section X) they take years on average to collect, they were not receivables for healthcare services, they did not actually constitute accounts receivable, and unlike healthcare receivables they do not have to be paid if the hospital liquidates in bankruptcy. Lastly, the unsecured loans for the purchase of distressed hospitals, real estate, and working capital advances were not authorized by either the SCHI

Agreement and SCI Agreement. Also, they were materially different than the 120 day eligible healthcare receivables represented in the and Offering Materials and the Audited Financials, because they were a high risk use of Stable-Value funds and were not secured by receivables at all as was represented in the Offering Materials and Audited Financials.

455. Furthermore, the representation regarding the focus of the SEC investigation was false and misleading, because the representation that "the focus" of the investigation was on investments in Sovereign Assurance and the relationship with Stewards omitted any reference to the SEC's concerns about the misuse and misrepresentations about the use of investors' funds, and did not disclose the actual misuse and misrepresentations about the use of funds. It also falsely suggested to the assignors that the investments in Sovereign Assurance and the relationship with Stewards were the only material issues the SEC was concerned with and that Founding Partners was otherwise in compliance with all federal laws. Also, the description of the tentative settlement was materially misleading, because it represented that Founding Partners and Gunlicks were otherwise in compliance with all federal securities laws and that the Offering Materials properly represented that Founding Partners loans and collateral.

456. The Cover Letter represented to the limited partners and investors that the SEC investigation was "successfully resolved."

457. That representation was false, because Mayer Brown had only succeeded in delaying the discovery of the fraud by concealing it from the SEC and by failing to disclose to the SEC and to the Funds and their investors the truth about the use of the funds, which allowed the fraud to continue and the damages resulting from the fraud to increase.

458. The representation in the Cover Letter was also misleading because it omitted material information regarding the actual scope of and concerns expressed in the SEC's investigation, including the SEC's concerns about the misuse and misrepresentations concerning the actual uses of the funds, omitted any disclosure of the true facts concerning the misuse and misrepresentations about the uses of the investors' funds, and represented that Founding Partners was in compliance with federal laws and that the Offering Materials and other information provided to investors properly represented the Founding Partners loans and collateral.

459. The representation in the Cover Letter was also false and misleading because, when read together with the Corrected Order, it suggested that the true facts relating to the issues of concern to the SEC had been disclosed to the SEC and resolved by the Corrected Order.

C. The Assignors Were Injured As A Proximate Result Of Their Reasonable Reliance On The Material Misrepresentations And Omissions

460. Harrison Family Investments, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Harrison Family Investments, L.P. initially invested in Stable-Value Fund II, L.P. on 1 March 2008, and made a subsequent investment on 1 August 2008.

461. Prior to its initial investment in Stable-Value Fund II, Harrison Family Investments, LP and/or its representative (Clanton Harrison) received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the SEC's Corrected Order

Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Harrison Family Investments and its representative (Clanton Harrison) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

462. Prior to its subsequent investment on 1 August 2008, Harrison Family Investments and its representative (Clanton Harrison) also received, read and reasonably relied upon the material representations in the monthly account statements, and Stable-Value II performance reports. At all relevant times, Harrison Family Investments and its representative (Clanton Harrison) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

463. Clanton Harrison III IRA is the retirement account for Clanton B. Harrison III, an individual who resides in Texas. Clanton Harrison III IRA invested in Stable Value Fund II, L.P. on 1 August 2008.

464. Prior to his initial investment in Stable-Value Fund II, Clanton Harrison received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and Stable-Value II Performance Reports. At all relevant times, Harrison Family Investments and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

465. Leslie T. Merrick Investment Trust is an entity organized under the laws of Texas with its principal place of business in Texas. The Leslie T. Merrick Investment Trust invested in Stable-Value Fund, L.P. with an initial investment date on 1 August 2004.

466. Prior to its initial investment Leslie T. Merrick Investment Trust and/or its representative (Leslie Merrick) received, read and reasonable relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the Leslie T. Merrick Investment Trust and its representative (Leslie Merrick) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

467. Chris Dance is an individual who resides in the state of Texas, and was counsel to Mt. Vernon. Mr. Dance initially invested in the Stable-Value Fund, L.P. on 2 August 2004, and subsequently invested on 1 February 2005. On 1 April 2007, Mr. Dance converted his entire limited partnership interest in Stable-Value to Stable-Value Fund II, L.P. Mr. Dance made a subsequent investment in Stable-Value Fund II on 5 September 2007.

468. Prior to his initial investment in Stable-Value Fund, Mr. Dance and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times,

Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

469. Prior to his Prior to his subsequent investment on 1 February 2005, Mr. Dance and/or his representatives also received, read and reasonably relied upon the representations in the Stable-Value performance reports, monthly account statements, 2004 Stable-Value Update Memorandum, and the 2003 Stable-Value Audited Financial Statements. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

470. Prior to converting his interest in Stable-Value Fund to Stable-Value Fund II in April 2007, Mr. Dance and/or his representative also received, read and reasonably relied upon the Stable-Value Fund II Confidential Offering Memorandum and Limited Partnership Agreement, the Stable-Value Fund 2004 and 2005 Audited Financial Statements. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

471. Prior to his subsequent investment in Stable-Value Fund II in September 2007, Mr. Dance and/or his representative also received, read and reasonably relied upon the material representations monthly account statements and performance reports. At all relevant times, Mr. Dance and/or his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

472. Kenny Allan Troutt Descendants Trust is an entity organized under the laws of Texas with its principal place of business in Texas. Kenny Allan Troutt Descendants Trust initially invested in Stable-Value Fund on 1 August 2004, and made subsequent investments on 1 November 2004, 1 April 2005, 3 October 2005, 3 March 2006, 16 March 2006, 21 May 2007, and 1 March 2008.

473. Prior to its initial investment, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) received, read and reasonably relied upon the material misrepresentations in Stable-Value Limited Partnership Agreement, Marketing Packet, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

474. Prior to all subsequent investments, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) received, read and reasonably relied upon the material misrepresentations in Stable-Value performance reports. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

475. Prior to its subsequent investments in November 2004 and April 2005, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2003 Audited Financial Statements, and the Stable-Value Update Memorandum for the year ending 2003. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

476. Prior to its subsequent investments in October 2005 and March 2006, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

477. Prior to its subsequent investments in May 2007, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the 2005 and 2006 Stable-Value Update Memorandums, and a draft of the Stable-Value 2006 Financial Statements. At all relevant times, Kenny Allan Troutt

Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

478. Prior to its subsequent investments in March 2008, Kenny Allan Troutt Descendants Trust and/or its representative (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) also received, read and reasonably relied upon the material misrepresentations in the Stable-Value 2006 Audited Financial Statements. At all relevant times, Kenny Allan Troutt Descendants Trust and its representatives (Kenny Allan Troutt, Dave Mumert, Nick Merrick, and Shannon Pittman) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

479. Double S Partners is an entity organized under the laws of Texas with its principal place of business in Texas. Double S Partners invested in Stable-Value Fund, L.P., with an initial investment date on 1 September 2006, and a subsequent investment on 1 April 2008.

480. Prior to its initial investment Double S Partners and/or its representative (Kerri Scott) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Double S. Partners and its representative (Kerri Scott) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

481. Prior to its subsequent investment in April 2008, Double S Partners and/or its representative (Kerri Scott) also received, read and reasonably relied upon the material representations in the Stable-Value monthly account statements, performance reports, the Stable-Value 2006 audited financial statements, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and the 2006 Stable Value Update Memorandum. At all relevant times, Double S. Partners and its representative (Kerri Scott) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

482. John Miller is an individual who resides in Indiana. Mr. Miller initially invested in Stable-Value on 1 August 2006, and then made additional investments on 1 March 2007, 1 January 2008, 1 March 2008, and 1 August 2008.

483. Prior to his initial investment in Stable-Value, Mr. Miller and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

484. Prior to his additional investment on 1 March 2007, Mr. Miller and/or his representative received, read and reasonably relied upon the material representations in the monthly account statements, and performance reports. At all relevant times, Mr. Miller

and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

485. Prior to his additional investments on 1 January 2008, 1 March 2008, and 1 August 2008, Mr. Miller and/or his representative also received, read and reasonably relied upon the material representations in the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, Stable-Value monthly account statements, performance reports, 2006 Stable-Value Update Memorandum, and the Stable-Value 2006 Audited Financial Statements. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

486. Mr. Miller converted his entire investment from Stable-Value to Stable-Value II on 1 October 2008. In deciding to convert his investment to Stable-Value II, Mr. Miller and his representative also received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value II Confidential Offering Memorandum, the Stable-Value II Limited Partnership Agreement, the Stable-Value monthly account statements and performance reports, the 2007 Stable-Value Update Memorandum, and the Stable-Value 2006 Audited Financial Statements. At all relevant times, Mr. Miller and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

487. Vassar Point, LLC is an entity organized under the laws of Indiana with its principal place of business in Indiana. Vassar Point, LLC initially invested in Stable-Value on 6 October 2008.

488. Prior to investing in Stable-Value, Vassar Point, LLC and/or its representative (John Miller) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value performance reports, the 2006 Stable-Value Audited Financial Statements, the 2006 and 2007 Stable-Value Update Memorandums, and the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Vassar Point, LLC and its representative (John Miller) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

489. Telesis IIR, L.P. is an entity organized under the laws of Delaware with its principal place of business in Utah. Telesis IIR invested in Stable-Value Fund, L.P. with an initial investment date of 1 August 2006, and subsequent investments on 1 December 2006, 1 January 2007, 19 November 2007, 1 January 2008, and 3 January 2008.

490. Prior to its initial investment, Telesis IIR and its representatives (including Jeffrey Clark and Michelle Jensen) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering

Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value performance reports, and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Telesis IIR and its representatives (including Jeffrey Clark and Michelle Jensen) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

491. Prior to all of its subsequent investments, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times Telesis IIR and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

492. Prior to its subsequent investment in November 2007, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the Stable-Value 2006 draft financial statements, and the 2006 Stable-Value Update Memorandum. At all relevant times, Telesis IIR and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

493. Prior to its subsequent investments in 2008, Telesis IIR and its representatives (Jeffrey Clark and Michelle Jensen and Bill Coleman) also received, read and reasonably relied upon the material representations in the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and the 2007 Stable-Value Update Memorandum. At all relevant times, Telesis IIR and its

representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

494. Glen Gibson is an individual who resides in Texas. Mr. Gibson invested in Stable-Value Fund II, L.P. on 12 September 2008.

495. Prior to investing Mr. Gibson received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum. At all relevant times, Mr. Mann was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

496. Ron Mann, IRA is the individual retirement account of Ron Mann, an individual who resides in Texas. Mr. Mann invested in Stable-Value Fund II, L.P. on 1 June 2007.

497. Prior to his initial investment Mr. Mann and/or his representative (Gary Mann) received, read and reasonably relied upon the material representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement. At all relevant times, Mr. Mann was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

498. Walter E. Johnson is an individual who resides in Texas. Mr. Johnson made an initial investment in Stable-Value Fund, L.P. on 8 December 2006, and made a subsequent investment on 2 April 2007.

499. Prior to investing Mr. Johnson received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the

Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Johnson was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted. that the representations in the documents were false.

500. Prior to his subsequent investment, Mr. Johnson also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Mr. Johnson was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

501. TJNJH Investment Partnership is an entity organized under the laws of XXXX with its principal place of business in Wisconsin. TJNJH initially invested in Stable-Value Fund, L.P. on 31 July 1997, and made subsequent investments on 31 August 1997, 31 March 1998, 10 July 2000, 30 September 2000, 31 December 2000, 12 January 2001, 12 February 2001, 23 February 2001, 1 June 2001, 8 August 2001, 4 February 2002, 15 March 2002, 17 June 2002, 2 December 2002, 27 January 2003, 1 May 2006, and 1 January 2008.

502. Prior to its initial investment TJNJH and/or its representative (Thomas Joseph) received, read and reasonably relied upon the Stable-Value Offering Memorandum.

503. Prior to all subsequent investments, TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, TJNJH and

its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

504. Prior to its subsequent investment in July 2000, TJNJH and/or its representative (Thomas Joseph) received, read and reasonably relied upon the Stable-Value June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

505. Prior to its subsequent investments in June 2002, December 2002, and January 2003, TJNJH and or its representative (Thomas Joseph) received, read and reasonably relied upon the Stable-Value May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

506. Prior to its subsequent investment in May 2006, TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 and 2004 Audited Financial Statements, and the Stable-Value 2003 through 2005 Fund Update Memorandums. At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

507. Prior to its subsequent investment in January 2008 TJNJH and/or its representative (Thomas Joseph) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 and 2006 Audited Financial Statements, and the

2006 Stable-Value Update Memorandum At all relevant times, TJNJH and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

508. Kathleen A. Olberts Living Trust is an entity organized under the laws of California with its principal place of business in California. Kathleen A. Olberts originally invested in Stable-Value Fund in January 2001. On 16 January 2007, the entire Kathleen A. Olberts interest in Stable Value was converted to an interest under the Kathleen A. Olberts Living Trust.

509. At the time of her initial investment, Kathleen A. Olberts received, read and reasonably relied upon the material representations in the Stable-Value Offering Memorandum, and the Stable-Value June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, Kathleen A. Olberts and the Kathleen A. Olberts Living Trust were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

510. Prior to converting the investment to the Kathleen A. Olberts Living Trust, the Kathleen A. Olberts Living Trust and/or its representative (Kathleen A. Olberts) received, read and reasonably relied upon the material representations in the Stable-Value May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value 2002-2005 Audited Financial Statements, Stable-Value Performance Reports, and the Stable-Value 2004 and 2005 Update Memorandum. At all relevant times, Kathleen A. Olberts was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

511. Annandale Partners, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Annandale Partners initially invested 1 January 2007, and made subsequent investments 4 April 2007, 1 May 2007, and 1 July 2007, 9 November 2007, 11 July 2008.

512. Prior to investing in Stable-Value, Annandale Partners and/or its representatives (Christine Ashmore, George Seay, Jared Hohertz) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

513. Prior to all additional investments in Stable-Value, Annandale Partners and/or its representatives (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the Stable-Value performance reports. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

514. Prior to its additional investments from May 2007 and afterward, Annandale Partners and/or its representative (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the draft Stable-Value

2006 financial statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

515. Annandale Partners II, LP is an entity organized under the laws of Texas with its principal place of business in Texas. Annandale Partners II initially invested 1 January 2007, and made subsequent investments on 1 May 2007, and 1 August 2007, 9 November 2007, 3 January 2008, 1 February 2008, 1 June 2008, 1 July 2008, and 1 August 2008.

516. Prior to investing in Stable-Value, Annandale Partners II and/or its representative (Christine Ashmore, George Seay, Jared Hohertz) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum and the Stable-Value 2005 Audited Financial Statements. At all relevant times, Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

517. Prior to its additional investments in Stable-Value, Annandale Partners and/or its representative (George Seay, Christine Ashmore, Jared Hohertz) also received, read and reasonably relied upon the representations in the Stable-Value performance reports and the draft Stable-Value 2006 financial statements. At all relevant times,

Annandale Partners, LP and its representatives (George Seay, Jared Hohertz, and Christine Ashmore) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

518. J. Christopher Dance IRA is the individual retirement account of J. Christopher Dance. Mr. Dance is an individual who resides in Texas. The J. Christopher Dance IRA initially invested in Stable-Value Fund on 1 April 2007.

519. Prior to the investment in Stable-Value Fund, the J. Christopher Dance IRA and/or its representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value Performance Reports, Stable-Value 2003 to 2005 Audited Financial Statements, and the Stable-Value 2004 and 2005 Update Memorandums. At the time of its initial investment and at all relevant times thereafter, J. Christopher Dance IRA and/or its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

520. R. Michael Bales IRA is the individual retirement account of Michael Bales an individual who resides in Kentucky. Mr. Bales first invested in Stable-Value Fund, L.P. on 5 November 2001, and made subsequent investments on 16 April 2002, 6 February 2003, 7 May 2004, 7 June 2004, 12 January 2006, and 12 September 2007.

521. Prior to his initial investment Mr. Bales received, read and reasonably relied upon the representations Stable-Value Limited Partnership Agreement, Confidential

Offering Memorandum dated April 1996, and the June 2000 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

522. Prior to all subsequent investments, Mr. Bales also received, read and reasonably relied upon the Stable-Value performance reports. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

523. Prior to his subsequent investment in February 2003, Mr. Bales also received, read and reasonably relied upon the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

524. Prior to his investments in May and June of 2004, Mr. Bales also received, read and reasonably relied upon the Stable-Value update memorandum. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

525. Prior to his investment in January 2006, Mr. Bales also received, read and reasonably relied upon the material representations in the 2004 and 2005 Stable-Value Update Memorandum, the Stable-Value 2003 Audited Financial Statements, and the Stable-Value 2004 Audited Financial Statements. At all relevant times, Mr. Bales was

unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

526. Prior to his investment in September 2007, Mr. Bales also received, read and reasonably relied upon the 2006 Stable-Value Update Memorandum, and the 2006 Stable-Value Audited Financial Statements. At all relevant times, Mr. Bales was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

527. Clear Fir Partners, L.P. is an entity organized under the laws of Washington with its principal place of business in Washington. Clear Fir Partners, L.P. initially invested in Stable-Value Fund II, L.P. on 1 January 2008, and made subsequent investments on 1 February 2008, and 2 October 2008.

528. Prior to its initial investment in Stable-Value Fund II, Clear Fir Partners, L.P. and/or its representative (John Cunningham) received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and Stable-Value Disclosure Brochure. At all relevant times, Clear Fir Partners, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

529. Prior to subsequent investments, Clear Fir Partners and representatives also received, read and reasonably relied upon the monthly account statements. At all relevant times, Clear Fir Partners, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

530. John E Cunningham IV is an individual who resides in Washington state. John and his wife Carolyn A. Cunningham jointly invested in Stable-Value Fund II, L.P. on 1 September 2007.

531. Prior to their initial investment, John E. Cunningham, Carolyn Cunningham, and/or their representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the Stable Value disclosure brochure. At all relevant times, John E. Cunningham, Carolyn Cunningham, and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

532. Carolyn A Cunningham is an individual who resides in Washington state. Carolyn and her husband John E. Cunningham jointly invested in Stable-Value Fund II, L.P. on 1 September 2007.

533. Prior to their initial investment, John E. Cunningham, Carolyn Cunningham, and or their representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, and the Stable Value disclosure brochure. At all relevant times, John E. Cunningham, Carolyn Cunningham, and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

534. Snyder Ranch, L.P. is an entity organized under the laws of Washington with its principal place of business in Washington. Snyder Ranch, L.P. initially invested in Stable-Value Fund II, L.P. on 3 April 2008.

535. Prior to its initial investment in Stable-Value Fund II, Snyder Ranch, L.P. and/or its representative received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement. At all relevant times, Snyder Ranch, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

536. Cunningham Children's Trust is an entity organized under the laws of Washington with its principal place of business in Washington. The Cunningham Children's Trust invested in the Stable-Value Fund II on 1 March 2008.

537. Prior to its initial investment, the Cunningham Children's Trust and their representatives received, read and reasonably relied upon the representations in the Stable-Value Fund II Offering Memorandum and Limited Partnership Agreement, the Stable Value disclosure brochure, and the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, the Cunningham Children's Trust and their representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

538. Gary Sledge is an individual who resides in the state of Georgia. Gary Sledge invested in Stable-Value Fund, L.P. on 1 April 2008.

539. Prior to his initial investment Mr. Sledge and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June

2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, Stable-Value Performance Reports, Stable-Value Fund's 2006 Audited Financial Statements, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved, the SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks. At all relevant times, Gary Sledge and/or his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

540. Stiles A. Kellett, Jr. is an individual who resides in the state of Georgia. Stiles Kellett initially invested in Stable-Value Fund II, L.P. on 5 October 2007, and made subsequent investments on 11 February 2008, and 8 May 2008.

541. Prior to his initial investment Stiles Kellett and/or his representative received, read and reasonably relied upon the material representations in the Stable-Value II Confidential Offering Memorandum, Limited Partnership Agreement, and marketing materials. At all relevant times, Stiles Kellett and his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

542. Prior to its subsequent investments Stiles Kellett and/or its representatives received, read and reasonably relied upon the material representations in the Stable-Value performance reports, Stable-Value Fund's 2006 Audited Financial Statements, the SEC's

Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved. At all relevant times, Stiles Kellett and his representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

543. Kellett Family Partners, LP is an entity organized under the laws of Georgia with its principal place of business in Georgia. Kellett Family Partners, L.P. invested in Stable-Value Fund II with an initial investment date of 1 October 2007, and subsequent investments on 1 February 2008, and 1 May 2008.

544. Prior to its initial investment, Kellett Family Partners and/or its representatives (Gary Sledge of Kellett Investment Corp. and Stiles A. Kellett) received, read and reasonably relied upon the material representations made in the Stable-Value II Confidential Offering Memorandum, Limited Partnership Agreement, and marketing materials. At all relevant times, Kellett Family Partners and/or its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

545. Prior to its subsequent investments Kellett Family Partners and/or its representatives (Gary Sledge of Kellett Investment Corp. and Stiles A. Kellett) received, read and reasonably relied upon the material representations in the Stable-Value performance reports, Stable-Value Fund's 2006 Audited Financial Statements, the SEC's

Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and a representation by Steve Menna of Ernst & Young that E&Y was not retracting its clean audit opinion for the Stable-Value 2006 Audited Financial Statements and that any issues with Founding Partners management had been successfully resolved. At all relevant times, Kellett Family Partners and/or its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

546. Chariot Stable Asset Fund, LP is an entity organized under the laws of Delaware with its principal place of business in California. Chariot Stable Asset Fund invested in Stable-Value Fund, L.P. on 1 July 2005. The initial investment was funded with assets of Chariot Stable Asset Fund, and a rollover of Ahmos Hassan's investment in Stable-Value Fund, L.P. into the Chariot Stable Asset Fund limited partnership interest in Stable-Value Fund.

547. Mr. Hassan is an individual who resides in Michigan. Mr. Hassan is the president and owner of Chariot Management, Inc., the general partner of Chariot Stable Asset Fund, LP. Mr. Hassan originally invested in Stable-Value Fund, L.P. on 16 July 2003. On 1 July 2005, Mr. Hassan closed his limited partnership interest in Stable-Value Fund and converted it into an interest in Chariot Stable Asset Fund's limited partnership interest in Stable-Value Fund. Mr. Hassan is a representative of the general partner of Chariot Stable Asset Fund, L.P.

548. Chariot Stable Asset Fund made additional investments on 3 October 2005, 3 February 2006, 3 July 2006, 5 March 2007, 17 December 2007, 1 February 2008, and 5 January 2009.

549. Prior to its initial investment on 1 July 2005, Chariot Stable Asset Fund, L.P. and/or its representative (Mr. Hassan) received, read and reasonably relied upon the material representations in the Credit and Security Agreement with SCHI, the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, and Stable-Value Update Memorandum. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

550. Prior to its subsequent investments, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

551. Prior to its investments in 2006, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the

representations were materially false and misleading, and of the truth of the material facts omitted.

552. Prior to its investment in March 2007, Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 Audited Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

553. Prior to its investments in December 2007, 1 February 2008, and 5 January 2009 Chariot Stable Assent Fund and its representative (Mr. Hassan) also received, read and reasonably relied upon the material representations in the draft Stable-Value 2006 Financial Statements. At all relevant times, Chariot Stable Asset Fund and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

554. MJA Innovative Income Fund, LP is an entity organized under the laws of Virginia with its principal place of business in Virginia. MJA initially invested in Stable-Value Fund, L.P. on 4 March 2008, and made a subsequent investment on 1 April 2008.

555. Prior to investing in Stable-Value, MJA and/or its representative William Pusey of JoycePayne Partners, MJA's investment advisor, received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000

Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, SEC's Corrected Order Instituting Administrative and Cease and Desist Proceedings against FPCM and Gunlicks, and Stable-Value Update Memorandum. At all relevant times, MJA Innovative Income Fund, LP and its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

556. Maxwell Halstead Partners LLC is an entity organized under the laws of Illinois with its principal place of business in Illinois. Maxwell Halstead Partners LLC made investments in Stable-Value Fund, L.P. with an initial investment date on 1 November 2004, and subsequent investments on 1 December 2004, 1 January 2005, 7 January 2005, 1 April 2005, 1 July 2005, 1 July 2006, and 1 March 2008.

557. Prior to its initial investment, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, the May 2002 Confidential Supplement to the Offering Memorandum, the Stable-Value Fund 2003 Audited Financial Statements, and Stable-Value Update Memorandum. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

558. Prior to Maxwell Halstead Partners' subsequent investments in 2005, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

559. Prior to Maxwell Halstead Partners' subsequent investment in July 2006, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 Audited Financial Statements. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

560. Prior to Maxwell Halstead Partners' subsequent investment in March 2008, Maxwell Halstead Partners and/or its representative (William S. Leavitt of Leavitt Capital Management) also received, read and reasonably relied upon the material representations in the Stable-Value 2005 Audited Financial Statements, and draft 2006 financial statements. At all relevant times, Maxwell Halstead Partners and/or its representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

561. Haines All-Seasons Select Fund I, LLC is an entity organized under the laws of Alabama with its principal place of business in Alabama. Haines All-Seasons Select

Fund I first invested in Stable-Value Fund on 1 April 2004, and made subsequent investments on 1 May 2004, 1 October 2004, 1 August 2007, and 1 March 2008.

562. Prior to its initial investment, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

563. Prior to all subsequent investments, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

564. Prior to its subsequent investment in October 2004, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 Audited Financial Statements, and the Stable-Value year end 2003 Update Memorandum. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and

Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

565. Prior to its subsequent investments in August 2007 and March 2008, Haines All-Seasons Select Fund I and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 to 2006 Audited Financial Statements, and the 2005 and 2006 Stable-Value Update Memorandums. At all relevant times, Haines All-Seasons Select Fund I and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

566. Haines All Seasons Select Fund II, LLC is an entity organized under the laws of Alabama with its principal place of business in Alabama. Haines All-Seasons Select Fund II first invested in Stable-Value Fund on 1 August 2004, and made subsequent investments on 1 February 2005, 1 April 2005, and 1 August 2007.

567. Prior to its initial investment in August 2004, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Stable-Value performance reports, 2003 Stable-Value Update Memorandum Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the

representations were materially false and misleading, and of the truth of the material facts omitted.

568. Prior to all subsequent investments, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value performance reports. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

569. Prior to its subsequent investments in February 2005 and April 2005, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2003 Audited Financial Statements. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

570. Prior to its subsequent investment in August 2007, Haines All-Seasons Select Fund II and/or its representatives (John Cox and Charles Haines) also received, read and reasonably relied upon the material representations in the Stable-Value 2004 to 2006 Audited Financial Statements, and the 2005 and 2006 Stable-Value Update Memorandums. At all relevant times, Haines All-Seasons Select Fund II and its representatives (John Cox and Charles Haines) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

571. Dakota Partners L.P. is an entity organized under the laws of Illinois with its principal place of business in Illinois. Dakota Partners made an initial investment in Stable Value on 4 December 2002, and subsequent additional investments on 1 March 2003, and 1 April 2005.

572. Prior to its initial investment, Dakota Partners L.P. and/or its representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Dakota Partners L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

573. Prior to its subsequent investment on 1 April 2005, Dakota Partners L.P. and/or its representative also received, read and reasonably relied upon the monthly account statements and Stable-Value monthly performance reports. At all relevant times, Dakota Partners L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

574. PP Partnership, L.P. is an entity organized under the laws of Illinois and has its principal place of business in Glencoe, Ill. PP Partnership, L.P. invested in Stable-Value, with its first investment on 1 January 2003, and a subsequent investment on 1 March 2004.

575. Prior to its initial investment, PP Partnership, L.P. and/or its representatives (Paul Sternberg, William Leavitt, and Lawrence Bober) received, read and reasonably

relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, PP Partnership, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

576. Prior to its subsequent investment in March 2004 PP Partnership, L.P. and/or its representative also received, read and reasonably relied upon its monthly account statements, and performance reports. At all relevant times, PP Partnership, L.P. and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

577. Rodger Sanders is an individual who resides in Texas. Mr. Sanders made an initial investment in Stable-Value fund on 1 May 2004.

578. Prior to his initial investment, Rodger Sanders and/or his representative (William Leavitt) received, read and reasonably relied upon the material representations in the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Sanders was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

579. Stuart Frankenthal is an individual who resides in Illinois. Mr. Frankenthal made an initial investment in Stable-Value on 1 May 2007.

580. Prior to his initial investment in Stable-Value, Mr. Frankenthal and/or his representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Frankenthal was unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

581. J. Mark Lozier Revocable Trust is an entity organized under the laws of Illinois with its principal place of business in Illinois. The J. Mark Lozier Revocable Trust invested in Stable-Value Fund, L.P. on 1 March 2004.

582. Prior to its initial investment in Stable-Value Fund, the J. Mark Lozier Revocable Trust and/or its representatives (J. Mark Lozier and William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the J. Mark Lozier Revocable Trust and/or its representatives (J. Mark Lozier and William Leavitt) were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

583. Four J Partnership, L.P. is an entity organized under the laws of Illinois with its principal place of business in Illinois. Four J Partnership invested in Stable-Value fund,

with an initial investment on 1 July 2003, and subsequent investments on 1 April 2004, 1 November 2004, 1 April 2005, and 1 October 2005.

584. Prior to its initial investment Four J Partnership and/or its representatives (Gerald Sommers and William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

585. Prior to its subsequent investment on 1 April 2004, Four J Partnership and/or its representative received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

586. Prior to its subsequent investment on 1 November 2004, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

587. Prior to its subsequent investment on 1 April 2005, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly

performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

588. Prior to its subsequent investment on 1 October 2005, Four J Partnership and/or its representatives also received, read and reasonably relied upon the Stable-Value monthly performance reports and its monthly account statements, the Stable-Value update memorandums, and the Stable-Value 2003 audited financial statements. At all relevant times, the Four J. Partnership and its representatives were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

589. Paul Loeb is an individual who resides in Illinois. Mr. Loeb invested in Stable-Value Fund, L.P. with an initial investment date on 1 January 2004.

590. Prior to his initial investment, Mr. Loeb and/or his representative (William Leavitt) received, read and reasonably relied upon the Stable-Value Limited Partnership Agreement, Confidential Offering Memorandum dated April 1996, the June 2000 Confidential Supplement to the Offering Memorandum, and the May 2002 Confidential Supplement to the Offering Memorandum. At all relevant times, Mr. Loeb and his representative were unaware that the representations were materially false and misleading, and of the truth of the material facts omitted.

COUNT I
PROFESSIONAL MALPRACTICE (E&Y)

591. ~~348.~~ Plaintiff realleges and incorporates the allegations above as though fully set forth herein.

592. ~~349.~~ As alleged in detail above, E&Y breached its professional duties to Founding Partners and acted negligently in numerous ways by, among other things: (a) failing to properly plan its audits of Founding Partners' financial statements; (b) failing to gain a necessary understanding of the unique aspects of the Founding Partners' business, course of dealing and industry; (c) failing to properly perform GAAS audits; (d) failing to exercise professional skepticism during the audits and in performing certain Agreed-Upon Procedures; (e) failing to remain independent of Gunlicks and the Sun Capital entities; (f) failing to design adequate and necessary Agreed-Upon Procedures; (g) failing to evaluate the collectability of receivables serving as collateral for Stable-Value's loans; (h) failing to evaluate the collectability of Sun Capital's loans to related parties; (i) failing to evaluate whether Sun Capital's use of Founding Partners' loan proceeds was consistent with the SCHI Agreement, the SCI Agreement, or with what was being represented to the limited partners and other innocent decision-makers of Founding Partners; (j) failing to properly perform Agreed-Upon Procedures; (k) failing to properly staff its attest engagements; (l) failing to recognize and/or disclose and communicate material weaknesses in internal controls; (m) failing to evaluate the need for and to require or appropriate allowance or reserve for loan loss; and (n) issuing unqualified audit opinions on financial statements which E&Y knew or should have known were materially misstated and misleading.

593. ~~350.~~ As alleged in detail above, E&Y ignored numerous GAAS red flags, including, but not limited to: (a) Founding Partners' lack of or inadequate internal controls; (b) lack of any qualified personnel to value the receivables serving as collateral for the Founding Partners' loans; (c) extensive transactions with related parties by the Sun Capital entities; (d) the Sun Capital entities' lack of audited financial statements; (e) Sun Capital's use of Stable-Value loan proceeds in manners inconsistent with what was represented in Stable-Value's financial statements; and (f) deviations from the SCI and SCHI Agreements.

594. ~~351.~~ E&Y also breached its duty of care because it was not independent based upon its years of providing tax accounting to Gunlicks and his family and its desire to obtain business from Sun Capital.

595. ~~352.~~ As the direct and proximate result of E&Y's breaches of duty, Founding Partners was damaged in an amount to be ~~proven~~proved at trial.

COUNT II
NEGLIGENT MISREPRESENTATION (E&Y)

596. ~~353.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

597. ~~354.~~ E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

598. ~~355.~~ E&Y also misrepresented to Founding Partners the true reasons why it originally resigned from the 2007 audit.

599. ~~356.~~ E&Y also repeatedly misrepresented to Founding Partners that it would timely complete the 2007 audit.

600. ~~357.~~ E&Y made these representations negligently and without a reasonable basis to believe their truth.

601. ~~358.~~ E&Y knew or should have known that E&Y's representations were false.

602. ~~359.~~ E&Y was obligated to disclose to Founding Partners the material information it failed to disclose as alleged herein.

603. ~~360.~~ E&Y reasonably foresaw and expected that limited partners and other innocent decision-makers would rely on E&Y's misrepresentations.

604. ~~361.~~ Limited partners and other innocent decision-makers of Founding Partners in fact relied upon E&Y's misrepresentations in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital. Such reliance was reasonable.

605. ~~362.~~ Founding Partners' reliance on E&Y's misrepresentations was reasonable and justifiable.

606. ~~363.~~ As a direct and proximate result of Founding Partners' reasonable reliance on E&Y's misrepresentations, Founding Partners (and the Assignors) sustained damages in an amount to be ~~proven~~proved at trial.

COUNT III

FRAUD (E&Y)

607. ~~364.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

608. ~~365.~~ E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

609. ~~366.~~ E&Y either knew at the time it made those misrepresentations that they were false or E&Y acted with reckless disregard for their truth or falsity.

610. ~~367.~~ E&Y reasonably foresaw, expected and intended that the limited partners and other innocent decision-makers at Founding Partners would rely on E&Y's representations contained in its audit report.

611. ~~368.~~ The limited partners and innocent decision-makers of Founding Partners in fact relied on E&Y's misrepresentations in refraining from taking action to protect Founding Partners' assets at Sun Capital despite Sun Capital's use of those assets in a manner inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

612. ~~369.~~ As alleged in detail above, E&Y concealed the truth regarding Sun Capital's use of Founding Partners' loan proceeds despite its knowledge of those facts, and despite its affirmative professional obligation to reveal those facts to the limited partners

and other innocent decision-makers of Founding Partners and to advise them that they should not rely on Founding Partners' financial statements.

613. ~~370.~~ The limited partners and other innocent decision-makers of Founding Partners relied upon E&Y's silence in the face of its affirmative duty to speak in believing that Founding Partners' assets at Sun Capital were being used in a manner consistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

614. ~~371.~~ The limited partners and other innocent decision-makers of Founding Partners reasonably relied upon E&Y's silence in the face of a duty to speak in refraining from taking action to protect Founding Partners' assets at Sun Capital despite the fact that those assets were, unbeknownst to them, in fact being used in manners inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners and that those assets were being exposed to extraordinary risk of loss. Such reliance was reasonable and justifiable.

615. ~~372.~~ As a direct and proximate result of E&Y's fraud, Founding Partners and the Assignors were damaged in an amount to be ~~proven~~proved at trial.

~~373. E&Y's conduct was willful, extreme and outrageous, with reckless disregard for the rights and interests of others, thus meriting an award of punitive damages.~~

COUNT IV
BREACH OF FIDUCIARY DUTY (E&Y)

616. ~~374.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

617. ~~375.~~ As explained above, the facts alleged herein establish that E&Y owed fiduciary duties to Founding Partners (and the Assignors), including the duties of due care, loyalty, and full disclosure of all material facts.

618. ~~376.~~ E&Y breached its fiduciary duties that it owed to Founding Partners (and the Assignors) by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds, and by failing to reveal to Founding Partners the true reasons for its decision to resign from the Founding Partners' audit engagement as set forth herein.

619. ~~377.~~ E&Y further breached its fiduciary duties to Founding Partners (and the Assignors) by failing to disclose that the value of the collateral securing Stable-Value's loans to Sun Capital was inadequate to cover any, or at most only a small portion, of the amount of the loans.

620. ~~378.~~ Founding Partners' (and the Assignors') damages were directly and proximately caused by E&Y's breaches of the fiduciary duties it owed to Founding Partners (and the Assignors).

COUNT V

AIDING AND ABETTING FRAUD (E&Y)

621. ~~379.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

622. ~~380.~~ As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors including the Assignors and Founding Partners

through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

623. ~~381.~~ FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

624. ~~382.~~ FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

625. ~~383.~~ The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

626. ~~384.~~ E&Y had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

627. ~~385.~~ E&Y gave substantial assistance to FPCM and Gunlicks' fraud by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to

disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

628. ~~386.~~ Founding Partners' (and the Assignors') damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT VI
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (E&Y)

629. ~~387.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

630. ~~388.~~ FPCM owed Founding Partners and the Assignors fiduciary duties by virtue of its role as general partner of Founding Partners.

631. ~~389.~~ Gunlicks owed fiduciary duties to Founding Partners and the Assignors by virtue of his position as an officer and/or agent of FPCM and by virtue of his relationship of trust and confidence with the limited partners of the Funds.

632. ~~390.~~ As alleged above, Mayer Brown owed fiduciary duties to Founding Partners (and the Assignors) by virtue of the legal services it provided to Founding Partners.

633. ~~391.~~ As alleged in greater detail above, FPCM and Gunlicks breached their fiduciary duties by, among other things, issuing financial statements on behalf of Founding Partners that falsely represented that SCHI was using Founding Partners' loan proceeds to purchase healthcare receivables and that any healthcare receivables aged beyond 120-days were either removed or replaced.

634. ~~392.~~ As alleged in greater detail above, Gunlicks and Mayer Brown breached the fiduciary duties they owed to Founding Partners by, among other things, preparing and issuing confidential offering memoranda and other marketing materials that falsely represented to limited partners and investors that Founding Partners' loans to SCHI were fully secured with healthcare receivables and that any such healthcare receivables aged beyond 120-days were either removed or replaced.

635. ~~393.~~ By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y knew that FPCM and Gunlicks' authorization and/or approval of Sun Capital's use of Founding Partners' funds constituted breaches of the fiduciary duties that FPCM and Gunlicks owed to Founding Partners (and the Assignors).

636. ~~394.~~ By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y was aware of and understood that the misrepresentations in Founding Partners' financial statements and offering materials that Founding Partners' loans were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced constituted breaches of fiduciary duties owed to Founding Partners (and the Assignors) by FPCM, Gunlicks and Mayer Brown.

637. ~~395.~~ As alleged in greater detail above, E&Y substantially assisted in FPCM's and Mayer Brown's breaches of fiduciary duty by issuing unqualified audit opinions on Founding Partners' financial statements and by failing to disclose Sun Capital's use of Founding Partners' funds in a manner inconsistent with what was being represented to investors despite having a duty to do so pursuant to professional standards.

638. ~~396.~~ The damages suffered by Founding Partners (and the Assignors) were directly and proximately caused by the breaches of fiduciary duty described above.

COUNT VII
PROFESSIONAL MALPRACTICE (MAYER BROWN)

639. ~~397.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

640. ~~398.~~ Mayer Brown is a law firm and, thus qualifies as a professional under Florida law.

641. Founding Partners was in privity with Mayer Brown, or at a minimum, was an intended third party beneficiary of Mayer Brown's legal services.

642. ~~399.~~ As counsel to Founding Partners, Mayer Brown owed Founding Partners a duty to advise and counsel them with the skill, knowledge, and experience of similarly situated counsel.

643. ~~400.~~ Mayer Brown also had the duty to comply with all professional regulations, including those rules regulating Florida, Illinois, and New York attorneys.

644. ~~401.~~ Mayer Brown breached its duties of loyalty and of due care to Founding Partners.

645. ~~402.~~ Mayer Brown's breach proximately caused damages to Founding Partners.

COUNT VIII

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (MAYER BROWN)

646. ~~403.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

647. ~~404.~~ FPCM and Gunlicks owed fiduciary duties to the Founding Partners and the Assignors, including duties of due care, loyalty, and full disclosure of material facts.

648. ~~405.~~ The Founding Partners and the Assignors reposed their trust and confidence in FPCM and Gunlicks, and FPCM and Gunlicks accepted their trust and confidence.

649. ~~406.~~ Pursuant to their fiduciary duties, FPCM and Gunlicks owed the Founding Partners and the Assignors the duties to: (a) act loyally to and in the best interests of each of the Founding Partners; and (b) refrain from misrepresenting and/or omitting material facts.

650. ~~407.~~ FPCM and Gunlicks breached their fiduciary duties to the Founding Partners and the Assignors by, *inter alia*, failing to preserve assets, allowing events of default to occur without responding appropriately to protect the Founding Partners' interests, misrepresenting and omitting material facts to limited partners, and failing to respond appropriately to protect the Founding Partners' interests in response to deviations from agreements and investment strategies represented to the Founding Partners and their limited partners and investors.

651. ~~408.~~ The misconduct of FPCM and Gunlicks alleged herein was completely and totally adverse to the interests of the Founding Partners, and the Founding Partners in

no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein only resulted in the depletion and loss of the Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

652. ~~409.~~ Mayer Brown knew of FPCM's misconduct and of Gunlicks' misconduct, and knew that their misconduct constituted breaches of fiduciary duty to the Founding Partners.

653. ~~410.~~ Mayer Brown provided substantial assistance and/or encouragement to FPCM and to Gunlicks to act in breach of their duties to Founding Partners by: (a) knowingly drafting false statements and drafting statements that omitted material information in offering memoranda and/or supplements; (b) dissuading FPCM and Gunlicks from declaring defaults or exercising remedies; ~~and~~ (c) advising FPCM and Gunlicks to continue conduct that Mayer Brown knew to be breaches of their fiduciary duties to Founding Partners; (d) forming a new entity to raise capital for the healthcare receivable program and enabling it to conduct business in Florida; (e) advising Founding Partners about disclosures in the Founding Partners Disclosure Brochure Form ADV Part II that contained false statements and omissions, or incorporated false statements made in the offering memoranda; (f) upon information and belief, making false statements to the SEC that Founding Partners and Gunlicks had corrected any violations of federal securities laws and were not in violation of federal securities laws, including violations relating to the subjects of the SEC's concerns in the investigation, and; (g) drafting a letter to Founding Partners investors and potential investors regarding the settlement with the SEC that

omitted material information and falsely represented that Founding Partners and Gunlicks were not violating federal securities laws.

654. ~~411.~~ Mayer Brown's misconduct also constituted a breach of their duties to non-clients under applicable law.

655. ~~412.~~ Mayer Brown was aware of its role as part of the tortious activity at the time it was providing substantial assistance to FPCM and to Gunlicks.

656. ~~413.~~ Mayer Brown knowingly and substantially assisted the principal violations being committed by FPCM and Gunlicks.

657. ~~414.~~ FPCM's and Gunlicks' wrongful acts proximately caused injury to Founding Partners.

658. ~~415.~~ Mayer Brown's conduct also proximately caused Founding Partners and the Assignors damages.

COUNT IX
AIDING AND ABETTING FRAUD (MAYER BROWN)

659. ~~416.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

660. ~~417.~~ As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors, including the Assignors and Founding Partners through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

661. ~~418.~~ FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

662. ~~419.~~ FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

663. ~~420.~~ The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

664. ~~421.~~ Mayer Brown had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

665. ~~422.~~ Mayer Brown gave substantial assistance to FPCM and Gunlicks' fraud as alleged above with respect to the substantial assistance in breaches of fiduciary duty, both by preparing offering memoranda and/or supplements that affirmatively misrepresented material facts to the limited partners and other innocent decision-makers, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

666. ~~423.~~ Founding Partners' and the Assignors' damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT X
AIDING AND ABETTING BREACHES OF STATUTORY DUTIES (E&Y AND MAYER BROWN)

667. ~~424.~~ Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

668. ~~425.~~ By their conduct as alleged above, E&Y and Mayer Brown directly and indirectly, and with knowledge and intent to deceive or with reckless disregard for the truth, joined or materially aided in the solicitation, offer, and sale of limited partnership interests to Assignors by means of untrue statements of material fact, or omissions to state material facts necessary in order to make the statements made not misleading, in violation of the laws of the various states in which Assignors received and relied upon the untrue statements and omissions to their injury.

669. ~~426.~~ The Assignors relied on the misrepresentations and omissions in making their investment decisions, and in refraining from taking action to protect their investments and Founding Partners' assets. Such reliance was reasonable and justifiable.

670. ~~427.~~ As a direct and proximate result of the misrepresentations and omissions and of E&Y's and Mayer Brown's violations of the law, the Assignors were damaged in an amount to be ~~proven~~proved at trial.

COUNT XI
FRAUD (MAYER BROWN)

671. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

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672. As described above, Mayer Brown knew that Stable-Value loans were being diverted to fund the purchase of workers compensation receivables, DSH payments, and unsecured loans and advances for the purchase of hospitals and real estate.

673. Mayer Brown knew that these uses of Founding Partners assets were not disclosed in the Stable-Value or Stable-Value II Offering Memorandums or Supplements, financial statements, or other disclosures to the SEC or to the investors.

674. Mayer Brown knew that Founding Partners limited partners, investors, and innocent decision makers were reasonably relying on the representations in the Offering Memorandums, Supplements, financial statements and Disclosure Brochures.

675. With this knowledge, Mayer Brown drafted a Cover Letter that represented that the SEC's First Investigation was successfully resolved, knowing that the cover letter was going to be sent to the investors together with the SEC's Corrected Order.

676. Mayer Brown drafted the Cover Letter and sent the Cover Letter and the SEC's Corrected Order in the course of its business and for pecuniary gain.

677. Mayer Brown sent the Cover Letter and Corrected Order to all of Founding Partners' limited partners, investors and innocent decision-makers and knew that they would rely upon the representations and the omissions in the Cover Letter.

678. The Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

679. Mayer Brown knew or should have known that the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

680. Mayer Brown intended that the limited partners and innocent decision-makers would rely upon the materially misleading and fraudulent representations and omissions in the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors, and they reasonably did rely as intended, while they were ignorant of the true facts.

681. As a direct and proximate result of their justifiable reliance on Mayer Brown's misrepresentations and omissions, Founding Partners and the Assignors were damaged in an amount to be proved at trial.

COUNT XII
NEGLIGENT MISREPRESENTATION (MAYER BROWN)

682. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

683. As described above, Mayer Brown knew or should have known that Stable-Value loans were being diverted to fund the purchase of workers compensation receivables, DSH payments, and unsecured loans and advances for the purchase of hospitals and real estate.

684. Mayer Brown knew or should have known that these uses of Founding Partners assets were not disclosed in the Stable-Value or Stable-Value II Offering Memorandums or Supplements.

685. Mayer Brown knew or should have known that Founding Partners limited partners, investors, and innocent decision makers were reasonably relying on the representations in the Offering Memorandums, Supplements, and Disclosure Brochures.

686. Mayer Brown drafted a Cover Letter that represented that the SEC's First Investigation was successfully resolved that it knew was going to be sent along with the SEC's Corrected Order.

687. Mayer Brown drafted the Cover Letter and sent the Cover Letter and Corrected order in the course of its business and for pecuniary gain.

688. Mayer Brown sent the Cover Letter and Corrected Order to all of Founding Partners' limited partners, investors, and innocent decision-makers and knew that they would rely upon the representations and the omissions in the Cover Letter.

689. Mayer Brown intended, or reasonably foresaw and expected that limited partners and other innocent decision-makers would rely upon the Cover Letter and Corrected Order.

690. The Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above.

691. Mayer Brown made these representations negligently and without a reasonable basis to believe their truth.

692. Mayer Brown knew or should have known that the Cover Letter when read together with the Corrected Order and other information provided to the Funds and to their investors was false, materially misleading, and omitted material information about the actual uses of the Funds' and investors' money, as alleged above

693. Mayer Brown was obligated to disclose to Founding Partners, limited partners, and then existing potential investors the material information it failed to disclose as alleged herein.

694. Limited partners and other innocent decision-makers of Founding Partners in fact relied upon Mayer Brown's misrepresentations and omissions in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital. Such reliance was reasonable.

695. The limited partners' and innocent decision-makers' reliance on Mayer Brown's misrepresentations was reasonable and justifiable.

696. As a direct and proximate result of Mayer Brown's negligent misrepresentation, Founding Partners and the Assignors were damaged in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands entry of judgment against E&Y and Mayer Brown, awarding Plaintiff compensatory~~ and punitive~~ damages, prejudgment interest, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable as of right.

Respectfully submitted this ___ day of ____________, ~~2011.~~2014.

By___________________________________

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