

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

**RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH
MAYER BROWN**

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**RECEIVER’S MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENT WITH MAYER BROWN**

Receiver Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver (“Receiver”) for Founding Partners Capital Management Company (“FPCM”); Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the “Receivership Entities” and excluding FPCM, the “Founding Partners Funds”), respectfully submits this Motion for Approval of Settlement Agreement with Mayer Brown LLP (“the Motion”), seeking the approval and entry of the preliminary approval and scheduling order substantially in the form of Exhibit G to the Settlement Agreement (as defined below),¹ and the entry of a Final Settlement Approval & Bar Order, a partial form of which is attached as Exhibit D to the Settlement Agreement.

The United States Securities and Exchange Commission (“SEC”) does not object to the relief sought herein.

I. INTRODUCTION

On December 30, 2010, the Receiver, represented by Court-approved special counsel, sued Mayer Brown LLP (“Mayer Brown”), which was former counsel to Receivership Entities, along with the Receivership Entities’ former auditor Ernst & Young (“E&Y”), for malpractice, among

¹ The form of order attached as Exhibit G to the Settlement Agreement (i) preliminarily approves the settlement between the Receiver and Mayer Brown; (ii) approves the content and plan for publication and dissemination of the Notice (Exhibit F to the Settlement Agreement); (iii) sets the date by which any objection to the Settlement or the Settlement Agreement may be filed; and (iv) schedules a hearing, should this Court determine that a hearing is necessary, to consider final approval of the Settlement, entry of the Final Settlement Approval & Bar Order (Exhibit D to the Settlement Agreement), and any further relief the Court deems just and proper. Capitalized terms used but not defined in this Motion have the same meaning set out in the Settlement Agreement.

other claims. The lawsuit was filed in the Seventeenth Judicial Circuit in and for Broward County, Florida (“Broward Litigation”).

To avoid the expense and risk of litigating the claims, the Receiver and Mayer Brown have agreed to resolve the Receiver’s claims against Mayer Brown in the Broward Litigation (the “Settlement”) pursuant to the terms of a proposed settlement agreement (“Settlement Agreement”), attached as **Exhibit 1**. Under the terms of the Settlement Agreement, Mayer Brown will pay the Receiver \$390 million, with an initial payment of \$370 million, and with interest on part of the deferred payments of the balance.² The Receiver’s authority to both file and settle the Broward Litigation is derived from the Receivership Order, entered by the Court in this action, Case No. 09-cv-229 (“SEC Action”). (D.E. 73, ¶2(f).)

The Receiver and his litigation counsel have been communicating with the Founding Partners investors about the proposed Settlement and the terms of the Settlement Agreement, in a series of telephone conference calls during the past three months, with dozens of investors participating in each of the conference calls. The investors who have participated in those conference calls have expressed their support for the proposed Settlement. The Receiver will be asking the investors to express their support in the form of written Consents to the proposed Settlement, and will advise the Court of the results of those efforts before the time the Court sets for any hearing it may hold on this Motion.

² The action against Mayer Brown was litigated primarily by Court-approved special counsel Beus Gilbert PLLC (“Beus Gilbert”), with the assistance of special outside counsel Grossman Roth Yaffa Cohen (“Grossman Roth”), on a contingency basis. The Court-approved fee agreement provides that 33.3% of the settlement funds, or approximately \$130 million, will go to special counsel Beus Gilbert and Grossman Roth, plus any costs or expenses that are due to them. The remainder of the funds will go to the Receivership Estate, and, after other expenses and reserves, will be available in a Court-ordered distribution process. *See* Part X, below.

On October 26, 2020, the court in the Broward Litigation entered an order, making preliminary findings, based on the terms of the proposed Settlement (including the substantial settlement amount), as well as that court's own observations and knowledge of the Broward Litigation history. In that order, which is attached hereto as **Exhibit 2**, the Broward court preliminarily concluded that the proposed Settlement was reached in good faith, and that it is a fair, adequate, and reasonable resolution of the claims that the Receiver has asserted against Mayer Brown.

II. THE RECEIVERSHIP ORDER

On April 20, 2009, the SEC filed its complaint against FPCM and William L. Gunlicks ("Gunlicks"), alleging that FPCM and Gunlicks had engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws. (D.E. 1.) The same day, the Court entered an order appointing a receiver over the Receivership Entities ("Initial Receiver"). (D.E. 9.) The Initial Receiver was subsequently removed by Court Order on May 13, 2009. (D.E. 70.) Thereafter, Daniel S. Newman, Esq. ("Receiver") was appointed Replacement Receiver in the Receivership Order on May 20, 2009 (D.E. 73). The Receivership Order provides that the Receiver shall, among other things:

(f) Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court . . .

(D.E. 73, ¶72(f).)

III. THE CLAIMS

The Receiver's Fourth Amended Complaint in the Broward Litigation alleges causes of action against Mayer Brown for Professional Malpractice, Aiding and Abetting Breach of Fiduciary Duty, Aiding and Abetting Fraud, Aiding and Abetting Breaches of Statutory Duties,

Fraud, and Negligent Misrepresentation. The Receiver asserts the claims of the four Founding Partners Funds, as well as the claims of 38 investors in the Founding Partners Funds who have assigned their claims to him. The Receiver seeks damages from Mayer Brown based on the allegations in the Fourth Amended Complaint. Mayer Brown denies these claims and has been vigorously defending liability and damages.

The Receiver's Fourth Amended Complaint also alleges several causes of action against E&Y. E&Y moved to compel arbitration of the Receiver's claims against it. As a result, by order of the Court in the Broward Litigation, certain arbitrable claims against E&Y are pending in arbitration proceedings, while the non-arbitrable claims against E&Y are stayed until after the arbitration concludes.

The course of the Broward Litigation has been hard-fought and active between the Receiver and Mayer Brown. There have been four different appeals to the Fourth District Court of Appeal – three of them concerning the claims against Mayer Brown – and extensive discovery and motion practice. The Court in the Broward Litigation has been asked to resolve numerous disagreements and disputes, including many discovery motions and six separate motions for partial summary judgment. Four of these motions for summary judgment were decided before that Court stayed the Broward Litigation on July 16, 2020. A motion for reconsideration of one of those partial summary judgment orders, and other discovery motions, were also pending when that Court stayed the Broward Litigation on July 16, 2020. Discovery to date has been extensive. Nearly two million documents were produced by parties and non-parties, and dozens of depositions were taken, including the depositions of many non-party witnesses.

The Receiver and Mayer Brown engaged in two formal mediations in an effort to resolve the Broward Litigation. The first occurred in February 2014 with Jonathan B. Marks of Marks

ADR in Washington, D.C., and the second occurred in January 2019 with Lawrence Watson of Upchurch, Watson, White & Max in Orlando, Florida. The mediation with Mr. Watson occurred pursuant to a June 7, 2017 scheduling order in the Broward Litigation that required a mediation process, which order was amended on August 13, 2018 and November 26, 2018 to accommodate extensions of the mediation deadline.

Neither mediation resulted in a settlement. Indeed, the Receiver and Mayer Brown returned to active and vigorous litigation for more than a year and a half after the conclusion of the 2019 mediation. In 2020, however, discussions among the parties and their counsel further advanced the settlement negotiations and resulted in a settlement in principle just before the parties sought to stay the Broward Litigation on July 15, 2020.

IV. THE PROPOSED SETTLEMENT AGREEMENT

In resolution of the Receiver's claims against Mayer Brown, the proposed Settlement Agreement provides in pertinent part:

- Mayer Brown will pay the Receiver \$390 million (the "Settlement Amount"), plus interest, as follows:
 - \$370 million to the Receiver within 7 days of the "Settlement Effective Date" as defined in the Settlement Agreement³ ("Initial Settlement Payment"); and

³ The Settlement Effective Date requires that the Conditions described in the Settlement Agreement shall have occurred before Mayer Brown is obligated to pay the Settlement Amount. See Settlement Agreement ¶¶ 23, 27. The Conditions include the entry of orders in the Broward Litigation (approving the Settlement and dismissing the Receiver's claims against Mayer Brown, as set out in Exhibit E to the Settlement Agreement) and in this Court (approving the Settlement and entering the requested Bar Order, as set out in Exhibit D to the Settlement Agreement), and both orders having become "Final" as that term is defined in the Settlement Agreement.

- \$5 million per year for the next 4 years, with interest on certain of these payments as provided in the Settlement Agreement (“Annual Successive Payments”).
- The Receiver and Mayer Brown agree to mutual releases of the Settled Claims (as defined in Paragraph 20 of the Settlement Agreement), and the Receiver’s claims against Mayer Brown in the Broward Litigation will be dismissed with prejudice.
- The Mayer Brown Released Parties, as defined in the Settlement Agreement, will also be released by FP Offshore Ltd. and by E&Y, pursuant to release agreements attached to the Settlement Agreement as Exhibits A and H.
- By entering into the Settlement Agreement, Mayer Brown does not admit any liability, fault, or wrongdoing in relation to the Broward Litigation or the Settled Claims.
- An essential term of the Settlement Agreement is that this Court enter a bar order (the “Bar Order”) prohibiting certain parties, including investors who receive a distribution from the Settlement Amount, from bringing certain claims against Mayer Brown, so that Mayer Brown can achieve “total peace” in return for paying the Settlement Amount, as discussed below.
- Mayer Brown commenced an ancillary proceeding in Cook County, Illinois, to enforce a deposition subpoena served on William L. Gunlicks in Illinois, captioned *Newman v. Mayer Brown LLP*, Case No. 2017 L 009824 (Cook Cty. Cir. Ct., Ill.) (the “Subpoena Proceeding”). Gunlicks in turn made a demand on Mayer Brown to obtain file documents from Mayer Brown, under an Illinois law that allows former clients to obtain certain file documents from their former counsel (the

“Gunlicks File Claim”). The Subpoena Proceeding, including the Gunlicks File Claim and other disputes asserted in or related to the Subpoena Proceeding, is still pending in Cook County, Illinois. As part of the proposed Settlement with Mayer Brown, and pursuant to a separate release agreement attached to the Settlement Agreement as Exhibit B, Gunlicks is required to release all claims he may have against Mayer Brown (including the Gunlicks File Claim), and Gunlicks and Mayer Brown will stipulate to dismiss the Subpoena Proceeding.⁴

- All of the Receiver’s claims against E&Y remain pending in the Broward Litigation and in the related arbitration(s) against E&Y. The Receiver’s release in the Settlement Agreement expressly excludes his claims against E&Y, and claims against E&Y also are expressly excluded from the releases given by Gunlicks and by FP Offshore Ltd.

See Settlement Agreement ¶¶ 20, 23, 28-31, 45, 55-58, 65, 71-73, & Exs. A, B, and H. Accordingly, if the Court approves the Settlement, the claims against Mayer Brown will be resolved, but the Receiver’s claims against E&Y will proceed.

V. THE REQUESTED BAR ORDER

A. Parties to be Barred

An essential condition of the Settlement Agreement is the entry by this Court of the Bar Order preventing the Receiver and the Receivership Entities, as well as certain other persons or entities (the “Bar Order Parties” as defined in the Settlement Agreement), from asserting claims

⁴ Under the release agreement, Mayer Brown is paying \$375,000 to Gunlicks’ counsel, William Delaney, as compensation for attorneys’ fees and costs in connection with the Subpoena Proceeding and Gunlicks’ deposition in the Litigation. *See* the Settlement Agreement, Exhibit B, paragraph 2.

against Mayer Brown that arise from or relate to Mayer Brown's alleged conduct or prior dealings with the Receivership Entities, including all Settled Claims, as set forth more fully in the Settlement Agreement and Exhibit D, which is a partial proposed Bar Order.⁵ Such claims include, without limitation, claims:

- (i) based in whole or in part upon any allegation made by the Receiver against Mayer Brown in the Broward Litigation, or relating to Mayer Brown's alleged conduct respecting the Receivership Entities; or
- (ii) based in whole or in part on any allegation that any Bar Order Party (as defined in the Settlement Agreement) has the right to contribution or indemnity from Mayer Brown respecting any loss or damages arising from or relating to any of Mayer Brown's alleged conduct or prior dealings with the Receivership Entities.

The entities or persons to be barred from asserting such claims against Mayer Brown are identified as the "Bar Order Parties" in the Settlement Agreement, and include:

- A. The Receiver (as defined in the Settlement Agreement);
- B. The Receivership Estate (as defined in the Settlement Agreement);
- C. The Founding Partners Entities (as defined in the Settlement Agreement);⁶
- D. The Assignors (as defined in the Settlement Agreement);

⁵ Exhibit D to the Settlement Agreement is a partial proposed Bar Order that contains the specific relief sought and certain factual findings but omits the additional factual and legal findings that will ultimately be necessary for this Court to approve the proposed Settlement and enter the Bar Order, after notice of the proposed Settlement has been provided, and the period for filing and addressing objections to the Proposed Settlement, if any, has passed. To assist the Court, the Receiver and Mayer Brown have agreed to work together to prepare a complete proposed final settlement approval and bar order for this Court at an appropriate later date, such as at a time closer to any hearing the Court may hold on this Motion.

⁶ The "Founding Partners Entities" as defined in the Settlement Agreement include all of the Receivership Entities, as defined above in this Motion.

- E. The Approved Claimants (as defined in the Settlement Agreement);
- F. The Unapproved Claimants (as defined in the Settlement Agreement);
- G. Ernst & Young LLP;
- H. The following persons associated with FPCM or Founding Partners Global Fund, Ltd. (“Global Ltd.”):
 - i. William L. Gunlicks
 - ii. Judy Aller
 - iii. William V. Gunlicks
 - iv. Philip Fues
 - v. Chris Bowers
 - vi. Robb Baldwin
 - vii. William Hart
 - viii. Barry Preston
 - ix. David Teets
 - x. Kermit Claytor
 - xi. Stephen Dickson;
- I. Nissa Cox and The William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox;
- J. Annalee Good and The William L. Gunlicks Irrevocable Trust f/b/o Annalee Good;
and
- K. William V. Gunlicks and The William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks.⁷

⁷ Nissa Cox, Annalee Good, and William V. Gunlicks are the adult children of William L. Gunlicks, and in 2010, they commenced an action against Mayer Brown and E&Y in the Circuit Court of Cook County, Illinois, Case No. 2010 L 010353 (the “Gunlicks Action”). William L.

The Bar Order expressly provides that, “Notwithstanding anything herein or in the Settlement Agreement to the contrary, this Bar Order shall not apply to any federal, state, or local governmental agency, including but not limited to the Securities and Exchange Commission.”

The Settlement Agreement states that Mayer Brown “is not willing to agree to the Settlement or th[e] [Settlement] Agreement (including its requirement for the payment of the very substantial Settlement Amount) without the assurance of ‘total peace’ in relation to the Settled Claims,” and that the proposed Bar Order is “necessary to provide Mayer Brown and the Mayer Brown Released Parties such ‘total peace.’” *See* Settlement Agreement ¶ 41. Both parties represent in the Settlement Agreement that the Bar Order is “a necessary condition of their Settlement.” *Id.* As a result, the entry of the Bar Order (and its having become “Final”) is one of the express Conditions of the Settlement Agreement that must be achieved before the “Settlement Effective Date” arises. *Id.* ¶¶ 23, 27.

Therefore, entry of the Bar Order and the Bar Order having become Final, as provided in the Settlement Agreement, is an essential condition of the Receiver’s and Mayer Brown’s agreement to settle the Receiver’s claims and for Mayer Brown’s obligation to pay the Settlement Amount. If the requested Bar Order is entered, the Bar Order Parties will be prohibited from asserting against Mayer Brown or any of the Mayer Brown Released Parties any claim that in any way relates to, is based upon, arises from, or is connected with the Founding Partners Entities or William L. Gunlicks; this case or its subject matter; the Broward Litigation or its subject matter; or any Settled Claim. The precise scope and language of the proposed partial Bar Order are found in Exhibit D to the Settlement Agreement. If the requested Bar Order is not entered, the

Gunlicks later joined as an additional plaintiff in that action, which was dismissed with prejudice in 2012.

termination provisions in the Settlement Agreement will apply. See Settlement Agreement ¶¶ 48-50.

Mayer Brown will not agree to the proposed Settlement unless the Court enters this Bar Order, and the Settlement Agreement requires the Bar Order before the Settlement Agreement becomes effective. *Id.* ¶¶ 23, 27, 41. The proposed Settlement, and the payment of the very substantial Settlement Amount to the Receiver, will not happen in the absence of the Bar Order. Therefore, the Receiver requests that the Court enter the Bar Order permanently barring any Bar Order Parties from suing Mayer Brown or the Mayer Brown Released Parties as a result of Mayer Brown's prior conduct or dealings with the Receivership Entities.

B. The Claims to be Barred Are So Closely Related to the Receiver's Claims, And Are Likely Barred By Statute, That It Is Fair And Equitable To Bar Further Litigation Against Mayer Brown

The Bar Order is both necessary to the proposed Settlement and fair and equitable under the circumstances. First, as discussed below, the Bar Order addresses claims that are so closely related to the Receiver's claims that barring such claims is consistent with the appropriate and efficient administration of the Receivership Estate. For example, the proposed Bar Order will bar claims from Approved Claimants who will recover once Mayer Brown pays the Settlement Amount. Second, also as discussed below, the claims precluded by the Bar Order are likely already time-barred or subject to other defenses. Nonetheless, it remains appropriate to enter the Bar Order to give Mayer Brown the requested assurance that it will not be subject to further litigation involving the Settled Claims, so that it is not required to defend even stale or otherwise deficient claims, in consideration of the very substantial Settlement Amount that Mayer Brown has agreed to pay pursuant to the Settlement Agreement's terms.

The SEC brought this action in 2009. The existence of the fraud alleged in the SEC's Complaint has been the subject of litigation and publicity since that time. For example:

- Beginning in 2009, shortly after his appointment, the Receiver began litigating with the Sun Capital entities. This ultimately led to a Court-approved settlement in 2012, with notice to investors in the Founding Partners Funds in 2012. While the Sun Capital settlement was pending Court approval, there was substantial motion practice and a hearing to determine the fairness of the settlement agreement and its contemplated transactions, which did not close until 2014. Investors and other third parties were on notice of and participated in these proceedings.
- The Receiver filed suit against Mayer Brown and E&Y in the Broward Litigation in 2010, and the allegations in the Receiver's pleadings and other information about the conduct of the Broward Litigation have been shared with investors, creditors, and other interested parties on the Receiver's website (<http://www.foundingpartners-receivership.com/>) since shortly after the Broward Litigation was commenced.
- Beginning August 28, 2012 (D.E. 349, "Order Approving Receiver's Motion for Approval of Claims Process") and continuing through July 3, 2014 (D.E. 430, "Opinion and Order Approving Receiver's Recommendations and Fairness of Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws"), the Receiver ran a Court-approved claims process, which involved notice to all of the investors in the Founding Partners Funds of the SEC's action and the underlying fraud. There was substantial motion practice during the claims process.

During the last ten years, none of the Bar Order Parties, except for William L. Gunlicks and his children, Nissa Cox, William V. Gunlicks and Annalee Good (whose 2010 lawsuit against Mayer Brown, referenced as the “Gunlicks Action” herein, was previously dismissed with prejudice), have filed any claim against Mayer Brown. The “Gunlicks File Claim” is described above, and the “Gunlicks Action” is described in greater detail below.

If any of the Bar Order Parties (including Mr. Gunlicks and his children) have or had any valid claim against Mayer Brown that a Bar Order would preclude, such claim would likely be time-barred given the applicable limitations periods (and any claim by Mr. Gunlicks is also subject to the release he provided in Exhibit B to the Settlement Agreement).⁸ Nonetheless, the Receiver understands that Mayer Brown’s need for assurance that it will be free of the possibility of any such claims, even if the claims could be dismissed – after still more expense and litigation – because the claims are time-barred or for other reasons. The substantial Settlement Amount reflects the parties’ expectation and agreement, as an essential condition of the proposed Settlement, that Mayer Brown should not be subject to the expense and risk of any further litigation relating to the Founding Partners matters and the Settled Claims. Moreover, any such claim would necessarily arise out of the same facts as the Receiver’s claims. Any claims that the Bar Order would preclude

⁸ The Gunlicks Action was filed in Cook County, Illinois, on September 9, 2010, and alleged claims for Attorney Malpractice and Breach of Contract and, later, Breach of Fiduciary Duty. Under *Illinois* law (if it applied), the statute of limitations for claims against attorneys is two years, beginning from the time that the injured client knew or should have known of the legal malpractice, and there is a six-year statute of repose, running from the date of the relevant act or omission. *See* 735 ILCS 5/13-214.3. More than eleven years have passed since the Receiver was appointed and Mayer Brown ceased work for any of the Founding Partners Entities. The Florida limitations periods for professional malpractice are two years (from discovery); for negligence or fraud, on a contract not in writing, or on “any action not specifically provided for in these statutes,” four years; and on a contract in writing, five years. *See* Fla. Stat. § 95.11. The various forms of the Uniform State Securities Act in the states where the investors reside generally provide a limitations period for civil actions based on fraud or negligent misrepresentation of two years after the discovery of the facts constituting the violation.

are, therefore, related to the claims of the Receiver, and it is appropriate that such claims should be barred, for the reasons explained in the following paragraphs and in Part C, below.

1. The Receiver, Receivership Estate, and Receivership Entities

The Receiver, the Receivership Estate, and the Receivership Entities are appropriately barred from asserting claims against Mayer Brown Released Parties because the Receiver brought all such claims belonging to the Receivership Estate or the Receivership Entities in the Broward Litigation. These claims are resolved and released pursuant to the proposed Settlement Agreement.

2. The Assignors

The Assignors are all investors who hold (or held) approved claims in the Receivership Estate (also called Approved Claimants, as defined below). The Assignors assigned their claims against Mayer Brown and E&Y to the Receiver so that the Receiver could assert them in the Broward Litigation for the benefit of the Receivership Estate. The Assignors' assigned claims are resolved and released pursuant to the proposed Settlement Agreement. If approved by the Court, the benefits of the proposed Settlement will accrue to all Approved Claimants, including the Assignors or their successors in interest. It is therefore appropriate that the Assignors be barred from pursuing any additional claims against the Mayer Brown Released Parties relating to the allegations in the Broward Litigation.

3. Approved and Unapproved Claimants

With Court approval, the Receiver advised investors that if they wished to assert any claim against the Receivership Estate, they were required to submit such claim to the Receiver in the claims process. (D.E. 338, 339.) "Approved Claimants" are all persons or entities who submitted claims to the Receiver in the claims process, which the Receiver determined, and the Court agreed, should be approved. (D.E. 430.) Each Approved Claimant's claim amount is reflected as an "Allowed Amount" on the Revised Schedule A the Receiver filed with the Court. (D.E. 417-5.)

Approved Claimants are the principal beneficiaries of the proposed Settlement Agreement with Mayer Brown, and it is appropriate that those who benefit from the proposed Settlement Agreement should also be barred from pursuing claims against the Mayer Brown Released Parties outside the litigation initiated by the Receiver. The Receiver's and the Court's ability to manage the Receivership Estate, and to settle claims belonging to the Receivership Estate, depends upon the ability to provide full and effective releases in consideration for the Settlement Amount. It is appropriate to use bar orders to facilitate such settlements. *See SEC v. Quiros*, 966 F.3d 1195, 1200 (11th Cir. 2020) (citing numerous Eleventh Circuit cases approving and entering bar orders where the bar orders were essential to the proposed settlements); *Newby v. Enron Corp.*, 302 F.3d 295, 300 (5th Cir. 2002) (affirming order enjoining "any new Enron-related actions" without first obtaining permission from the district court); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980) (barring state court proceedings in a securities fraud case, and affirming district court's "inherent equitable authority" to issue "ancillary relief" measures, including injunctions to stay proceedings by non-parties).

Those investors who submitted claims in the claims process, but whose claims were rejected by the Receiver and the Court (the Unapproved Claimants), should also be barred from pursuing litigation against the Mayer Brown Released Parties outside the litigation initiated by the Receiver. Any such untimely claims relating to Mayer Brown's work on Founding Partners matters would necessarily interfere with the Receiver's ability to settle the claims belonging to the Receivership Estate, and would undermine the authority of the Receiver and of this Court to administer the Receivership Estate pursuant to the orderly process for allowing and disallowing claims approved by this Court in 2012.

As noted, the Broward Litigation was commenced in 2010, and the Unapproved Claimants' claims in the Receivership were rejected by the Receiver and by this Court in 2014. With the exception of Gunlicks and his family, none of the Unapproved Claimants has commenced any litigation against Mayer Brown relating to the Receivership Entities or the allegations in the Broward Litigation since that time. Thus, the requested Bar Order would not preclude any claim that is not already time-barred.

Finally, to the extent that any Approved or Unapproved Claimants might have had any valid claims against Mayer Brown or the Mayer Brown Released Parties that the Bar Order would preclude, such claims would of necessity arise out of the same facts as the Receiver's claims. Any claims that the Bar Order would preclude are, therefore, wholly interrelated with the claims of the Receiver and thus are appropriately barred.

4. E&Y

E&Y is the only other defendant in the Broward Litigation. The Receiver's Fourth Amended Complaint alleges causes of action against E&Y for professional malpractice, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, aiding and abetting breaches of statutory duties, fraud, and negligent misrepresentation.

E&Y was named as a defendant in the Broward Litigation in 2010. E&Y has never asserted a crossclaim against Mayer Brown in the Broward Litigation, nor has it commenced any other action against Mayer Brown relating to the claims made by the Receiver against Mayer Brown in the Broward Litigation, or relating to Mayer Brown's representation of any Receivership Entities.⁹

⁹ The Mayer Brown Released Parties will be released by E&Y pursuant to a release agreement attached to the Settlement Agreement as Exhibit H.

The Settlement Agreement, the proposed Bar Order (Exhibit D to the Settlement Agreement), and the proposed final judgment order to be entered in the Broward Litigation (Exhibit E to the Settlement Agreement) also provide that, with respect to any judgment or award that might be entered against E&Y on any cause of action or claim in the Broward Litigation, or in the Receiver's arbitrations against E&Y, E&Y shall receive any credit or offset to which it may be entitled as a result of the Settlement, if and to the extent provided by any applicable statute, code, or rule of law. See Settlement Agreement ¶¶ 72-73; Exhibit D to the Settlement Agreement at Section II.D.; Exhibit E to the Settlement Agreement ¶ 5. The Settlement Agreement does not impair E&Y's ability to seek such a credit or offset under Florida or any other applicable law – in fact, it expressly affirms E&Y's right to seek an appropriate credit or offset as provided by law. See *id.* In either case, and also by virtue of the release agreement executed by Mayer Brown and E&Y (Exhibit H to the Settlement Agreement), the requested Bar Order does not deprive E&Y of any claim or benefit it would otherwise be entitled to assert under the law. Moreover, E&Y does not object to the settlement between the Receiver and Mayer Brown. See Exhibit 2, Broward Preliminary Order, ¶ 3.

5. Persons Associated with Founding Partners Entities.

The Bar Order Parties identified as persons associated with FPCM are included in the requested Bar Order because they were identified as having some role in the management and decision-making of FPCM or Global Ltd., including with respect to the investment decisions of the Founding Partners Funds. The requested Bar Order does not make any finding, nor does it imply, that these Bar Order Parties were in any way at fault or responsible for the misuse of Founding Partners assets. Nevertheless, these Bar Order Parties are appropriately barred from pursuing other claims against the Mayer Brown Released Parties relating to the allegations in the Broward Litigation, because any claims that they might have asserted against the Mayer Brown

Released Parties are likely untimely and barred by limitations, and because any claims necessarily arise from and are related to the claims belonging to the Receivership Estate.

William L. Gunlicks and William V. Gunlicks should be barred from pursuing any other claims against Mayer Brown for several reasons. Williams L. Gunlicks was the President of FPCM; William V. Gunlicks is his son and was employed at FPCM beginning no later than 2006 and continuing through to April 2009, including a substantial part of the period when the fraud alleged by the SEC in this proceeding was occurring. At one time, both were parties to the Gunlicks Action, which was an action filed against Mayer Brown in Cook County, Illinois, in September 2010. William L. Gunlicks' claims were eventually dismissed without further leave to amend, with the dismissal affirmed on appeal on August 19, 2014. William V. Gunlicks withdrew as a plaintiff from the litigation in 2012, before his father's claims were dismissed with prejudice. At that time, the Receiver partially joined with Mayer Brown in moving to dismiss that litigation because the plaintiffs were asserting claims that properly belonged to the Receiver and the Receivership Estate. The "Gunlicks Action" is described in more detail below.

Philip Fues and Chris Bowers are Approved Claimants and will be barred as such for the reasons provided above. To the extent that they might have had any claims against Mayer Brown not arising from their investments, but arising from work they did while they were working at FPCM or otherwise on behalf of the Receivership Entities, those claims would properly belong to the Receivership Entities for which they were working at the time. Those claims belong to the Receiver and are being settled in the proposed Settlement Agreement.

Judy Aller was an investor but has testified that she made a deliberate decision not to submit an investor claim in the Receivership Estate. Like Philip Fues and Chris Bowers, she also worked at FPCM. To the extent she might have had an investor claim against Mayer Brown relating to her

investment in the Receivership Entities, she has never asserted such a claim in the more than ten years since the Receiver was appointed. To the extent that she might have had any claims against Mayer Brown not arising from her own investments, but arising from work she did at FPCM or otherwise on behalf of the Receivership Entities, those claims would properly belong to the Receivership Entities for which she was working at the time. Those claims belong to the Receiver and are being settled in the proposed Settlement Agreement.

Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson were all identified as persons who may have had some other relationship which involved advice to Gunlicks, FPCM, or other Receivership Entities, including (in some cases) review or advice with respect to the management or structure of the Founding Partners Funds and their investment strategy or investment decisions. To the extent any one of these individuals might have had claims against Mayer Brown not arising from investments, but arising from work they did on behalf of the Receivership Entities, those claims would properly belong to the Receivership Entities. Those claims belong to the Receiver and are being settled in the proposed Settlement Agreement. None of these individuals has commenced any action to assert claims against Mayer Brown in the more than ten years since the Receiver was appointed (*i.e.*, such claims are likely time-barred). Moreover, any valid claim these individuals may have that the Bar Order would preclude would of necessity arise out of the same facts as the claims belonging to the Receiver and the Receivership Estate. Therefore, such claims are wholly “interrelated” with the claims of the Receiver and appropriately barred in order to protect the Receiver’s and this Court’s ability to manage the assets and claims belonging to the Receivership Estate. *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996).

6. The Gunlicks Children and Their Trusts

On September 9, 2010, each of William L. Gunlicks' adult children – Nissa Cox, individually, and as a minority shareholder of FPCM, and suing under Trust Number 61-6357311; Annalee Good, individually, and as a minority shareholder of FPCM, and suing under Trust Number 6-6357312; and William V. Gunlicks, individually, and as minority shareholder of FPCM, and suing under Trust Number 61-6357313, collectively, the “Children and Trusts” – filed suit against Mayer Brown LLP, two of its then-current partners, and Ernst & Young U.S., LLP in Cook County, Illinois (captioned *Nissa Cox, et al. v. Mayer Brown LLP, et al.*, No. 2010 L 10503, hereafter the “Gunlicks Action”). The Children and Trusts alleged, among other things, that Gunlicks and the Children and Trusts relied upon the advice and counsel of Mayer Brown, and were the direct or third-party beneficiaries of Mayer Brown's alleged agreement to represent FPCM as “compliance counsel.” William L. Gunlicks later joined the Gunlicks Action as an additional plaintiff.¹⁰

The Receiver partially joined with Mayer Brown in moving to dismiss the Gunlicks Action. Mayer Brown argued that Gunlicks and the Children and Trusts failed to state a claim for relief against Mayer Brown. The Receiver argued that the claims alleged in the Gunlicks Action actually belonged to the Receiver, and that the attempted assertion of those claims in the Gunlicks Action was interfering with the Receiver's ability to administer the Receivership Estate pursuant to this Court's Orders appointing the Receiver and Replacement Receiver. After the Illinois court, on April 12, 2012, dismissed the Third Amended Complaint filed by the Children, Trusts, and Gunlicks, with leave to re-plead, the Children and Trusts moved on June 15, 2012 to voluntarily

¹⁰ Although the case was initially filed against both Mayer Brown and E&Y, on October 6, 2011, the Illinois court granted E&Y's motion to dismiss and compel the claims to arbitration. No such arbitration was ever filed.

non-suit their claims. That motion was granted on July 10, 2012. The Fourth Amended Complaint, filed on June 15, 2012, listed Gunlicks as the sole remaining plaintiff. The Illinois court dismissed Gunlicks' claims without further leave to amend on October 12, 2012, and the dismissal was later affirmed on appeal by the Illinois Appellate Court, on August 19, 2014.

The filing of the Gunlicks Action is proof that the Children and Trusts were aware of the circumstances that they alleged as the bases for their claims against Mayer Brown in 2010; ten years later, any such claims are now certainly time-barred. If any of the Children and Trusts had a claim against Mayer Brown that the Bar Order would preclude, and that is not already time-barred, such claim would of necessity arise out of Mayer Brown's work for FPCM (one of the Receivership Entities) and from the same facts forming the basis of the Receiver's claims. Any such claims are unequivocally and wholly "interrelated" with the Receiver's claims, and are appropriately barred.

C. Entry of the Bar Order is Necessary and Appropriate

A district court has "broad powers and wide discretion to determine relief in an equity receivership." *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). This includes the power to enter a bar order. *See Quiros*, 966 F.3d at 1199 (acknowledging same and citing several Eleventh Circuit cases where bar orders were entered).

A bar order is a form of relief, often sought by a party to a settlement, that "extinguishes extraneous claims against the settling party, tying up the settling party's loose ends and encouraging resolution in complex cases that could otherwise span years." *Quiros*, 966 F.3d at 1199. This Circuit uses a two-part inquiry to determine whether entry of a bar order is appropriate: (1) the court must conclude that the bar order is essential to the settlement; and (2) the court must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties. *Quiros*, 966 F.3d at 1199 (citing *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996)).

A bar order is “essential” if it is integral to the proposed settlement agreement. *See Quiros*, at 1199-200 (holding that a bar order is essential when it is integral to settlement and the settling defendant would not have entered into the settlement in the absence of such bar order). Stated differently, “[i]f the parties would have still resolved their dispute without entry of the bar order, the order is not essential and the court should not enter it.” *Quiros*, 966 F.3d at 1200; *see also In re Jiangbo Pharm., Inc.*, 520 B.R. 316, 323 (Bankr. S.D. Fla. 2014)¹¹ (“The evidence before the Court shows that the Bar Order is an integral part of the Amended Settlement without which it would not be consummated.”), *aff’d sub nom. Brophy v. Salkin*, 550 B.R. 595 (S.D. Fla. 2015); *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-BKC, 2010 WL 3743885, at *6 (Bankr. S.D. Fla. 2010) (finding that a bar order was essential because the trustee “testified that without a bar order, the Settling Parties would not have had entered into the Settlement”). Here, there is no question the Bar Order is essential to the proposed Settlement Agreement, as the Settlement Agreement itself states that it is so. See Settlement Agreement ¶ 41. Mayer Brown’s agreement to the Settlement is expressly conditioned on entry of the Bar Order (and such order having become Final), and – as the parties have agreed – the Settlement Agreement is not effective without it. See *id.* ¶¶ 23, 27, 41.

The proposed Bar Order is also a fair and equitable term of and condition to the proposed Settlement Agreement. As explained above, any potential claims affected by the Bar Order are already barred by the statute of limitations and/or are wholly interrelated with the Receiver’s claims. In all events, the parties have reasonably agreed, after extensive litigation and good-faith settlement negotiations, to include the Bar Order as an essential Condition to the Settlement

¹¹ Given the similarity between bankruptcy and receivership proceedings, the Eleventh Circuit will “often apply bankruptcy principles to receivership cases because [they] have limited receivership precedent.” *Quiros*, 966 F.3d at 1200 (citing *Elliott*, 953 F.2d at 1566).

Agreement, as consideration for Mayer Brown's willingness to pay the very substantial Settlement Amount. Moreover, the Settlement Agreement itself, of which the Bar Order is a necessary component, is a fair and equitable resolution of this matter that is in the best interests of the Receivership Estate, as discussed below. In *SEC v. Nadel*, the court found that a bar order was appropriate:

inasmuch as the Receiver has established that the settlement, and its resulting avoidance of protracted and expensive litigation, is in the best interest of the Receivership estate and the investors and will not result in any prejudice. The Receiver additionally demonstrates that entry of the bar order facilitates a higher settlement value and, therefore, a larger recovery for claimants that would otherwise be available without the bar order.

2012 WL 12910648, at *1 (M.D. Fla. Feb. 10, 2012).

Here, much like in *Nadel*, the Bar Order is fair and equitable because it promotes pretrial settlement, it does not prejudice any of the parties to be barred, and it is necessary to a settlement that is in the best interests of the Receivership Estate and investors.¹²

VI. FINAL JUDGMENT PURSUANT TO RULE 54(B)

The Receiver requests that the Court's order approving the Settlement Agreement and entering the Bar Order also include Rule 54(b) partial judgment findings. See Settlement Agreement ¶ 6 (definition of "final" includes Rule 54(b) findings); Exhibit D Settlement Agreement at Section III.D (setting out proposed Rule 54(b) findings). Rule 54(b) provides that a district court may enter final judgment on a single claim in an action with multiple claims "if the

¹² For these same reasons, the bar order meets the standard set forth in *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). The so-called "Munford Factors" are: (1) the non-debtor third-party claims which will be barred are "interrelated" with the estate's claims; (2) the likelihood of non-settling defendants to prevail on barred claims; (3) the estate's litigation against the beneficiary of the bar order is complex; and (4) the continued litigation by the estate and other parties against the beneficiary of the bar order will deplete resources. See *Munford*, 97 F.3d at 455.

court expressly determines that there is no just reason for delay.” Fed.R.Civ.P. 54(b). An order approving the Settlement Agreement easily satisfies this requirement. Among other things, without Rule 54(b) findings that will allow the requested settlement approval and Bar Order to become Final, the Settlement will not take effect, if at all, until some unknown future date, and Mayer Brown would not be obligated to pay the Settlement Amount until such time as the settlement approval and Bar Order became Final. Thus, a lack of Rule 54(b) findings will delay the distribution of the Settlement Amount to the Approved Claimants.

A “claim” under Rule 54(b) is “the aggregate of operative facts which give rise to a right enforceable in the courts even if the party has raised different theories of relief.” *Planned Parenthood Sw. Ohio Region v. DeWine I*, 696 F.3d 490, 500 (6th Cir. 2012); accord *Hudson River Sloop Clearwater, Inc. v. Dep’t of Navy*, 891 F.2d 414, 418 (2d Cir. 1989) (applying same test and noting, “[w]hen the certified claims are based upon factual and legal questions that are distinct from those questions remaining before the trial court[,] the certified claims may be considered separate claims under Rule 54(b)”). “Claim” does not necessarily mean a “cause of action.” *See SEC v. Cap. Consultants, LLC*, 453 F.3d 1166 (9th Cir. 2006) (orders governing distribution plans in receivership were appealable upon district court’s Rule 54(b) certification); *Liberte Cap. Grp., LLC v. Capwill*, 148 F. App’x 426, 432 (6th Cir. 2005) (unpublished) (Rule 54(b) certification proper for order in receivership providing for manner of distribution of receivership assets).

On April 4, 2019, the United States District Court for the Southern District of Florida entered an order approving a settlement agreement in *SEC v. Quiros*, No. 16-cv-21301-GAYLES, 2019 U.S. Dist. LEXIS 232402 (S.D. Fla., April 4, 2019).¹³ There, the receiver was settling an

¹³ This order refers to a bar order that the district court also entered separately. The district court’s bar order was appealed and overturned because the Eleventh Circuit found it was not essential to the settlement agreement. *See Quiros*, 966 F. 3d at 1202. However, the order approving the

insurance coverage action in which he had been allowed to intervene, as well as all claims by the receivership entities for coverage under the relevant insurance policies. The district court included Rule 54(b) findings even though the causes of action the receiver was settling were pending in a different court, as is the case here with the Broward Litigation. *See also SEC v. DeYoung*, 850 F.3d 1172, 1179 (10th Cir. 2017) (affirming entry of settlement approval and bar order, with Rule 54(b) findings, where there was no action pending in any court).

Here, the Receiver is asserting against Mayer Brown claims that belong to parties to the Receivership proceeding (the Founding Partners Funds), and the claims are an asset of the Receivership Estate. If the Court approves the Settlement Agreement and enters the Bar Order, that will fix and fully resolve the value of that asset to the Receivership Estate, and there will be nothing left for the Court to do with respect to the claims against Mayer Brown besides approve the distribution of the proceeds of the Settlement Amount to Approved Claimants. *See Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1111-12 (9th Cir. 1999) (court order requiring turnover of assets to receiver was final decision appealable with Rule 54(b) certification because it resolved the parties' rights to the assets in question); *Wachovia Bank, Nat'l Assoc.*, No. 04-20834, 2009 WL 10669111, at *5 (S.D. Fla. May 14, 2009) (court entered Rule 54(b) findings for judgment concerning ownership of funds that were part of interpleader action in receivership proceeding).

settlement agreement, which contains the Rule 54(b) findings, was not overturned on appeal. And, unlike in *Quiros*, the Settlement Agreement here expressly recites the parties' agreement that the Bar Order "is a necessary condition of their Settlement" and that, in particular, Mayer Brown would not be willing to agree to the proposed Settlement or to pay the very substantial Settlement Amount without the assurance of "total peace" that the Bar Order can provide. See Settlement Agreement ¶ 41; see also *id.* ¶¶ 23 (Bar Order is a Condition), 27 (each Condition is necessary).

In addition, the Court's order approving the Settlement Agreement will effectively resolve the Receiver's claims against Mayer Brown in the Broward Litigation because the settlement approval order would give the Receiver permission to obtain the dismissal of those claims and to fully and finally resolve the Mayer Brown portion of the Broward Litigation. Finally, the approval of the Settlement Agreement and entry of the Bar Order are entirely separable from the other aspects of the Receivership that will remain pending. For example, as discussed above, the Receiver's litigation and arbitration proceedings against E&Y will continue, notwithstanding the Settlement with Mayer Brown and entry of the Bar Order, and the Receiver will continue to report to this Court with respect to the status of the E&Y proceedings.

VII. BEST INTERESTS OF THE RECEIVERSHIP ESTATE

The Receiver respectfully submits that the Court should approve the proposed Settlement Agreement because the Settlement is in the best interests of the Receivership Estate. The Receiver and Mayer Brown have actively litigated the Broward Litigation for over 10 years. During that time, there have been 3 different appeals to the Fourth District Court of Appeals and extensive motion practice. Numerous motions remain pending. Moreover, the parties have been engaged in active discovery since the summer of 2017. The Receiver has produced approximately 4 million pages of documents. Mayer Brown has produced hundreds of thousands of pages. The parties have taken approximately 40 depositions between them. Discovery has been so contentious that a special master was appointed for depositions.

The Receiver believes that continued litigation, with no guarantee of success, is not in the best interest of the Receivership Estate. The Settlement Amount to be paid by Mayer Brown is very substantial—\$390 million. When contingency counsel was retained by the Receiver, the Receiver did not have the resources or means to pursue these claims, except with a contingency fee arrangement. The settlement amount of \$390 million would allow a substantial distribution to

Approved Claimants. By contrast, the Receivership Estate would incur significant cost in continued litigation: millions of dollars of costs for expert witnesses, 40-80 additional depositions, travel (when feasible), and other litigation-related costs. While the Receiver's contingency counsel receives the same percentage of the recovery whether the matter is settled or goes to trial, there can be no guarantee of any result or recovery through a trial and therefore, although such recovery could be more, it could also be significantly less or none. Moreover, contingency counsel's percentage increases from 33.3% to 40% if there is an appeal post-trial, and there is a strong possibility of a post-trial appeal, no matter who would prevail. Given all these factors, the proposed Settlement Agreement is the best outcome for the Receivership Estate, including investors, and the Receiver can state that the process of reaching the proposed Settlement Agreement was fair, well-informed, and well-advised by the Receiver's retained professionals.

The ultimate inquiry in assessing a proposed receivership settlement is whether "the proposed settlement is fair." *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); see *In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) ("We see no reason to upset the court's conclusion that the settlement process and result were fair."). "Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). Although this court is not the trial court, the trial court in the Broward Litigation has already entered preliminary findings concluding that the proposed Settlement is fair, adequate, and reasonable, and that it was entered into in good faith. See Exhibit 2, Broward Preliminary Order. In making its own determination of fairness, the Receiver respectfully submits that this Court can appropriately give weight to the Broward Court's findings, and also examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of possible discovery; (3) the point on or below the range of discovery at

which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Sterling*, 158 F. 3d at 1204. *See also SEC v. Princeton Economic Int'l*, 2002 WL 206990, *2 (S.D.N.Y. 2002) (receivership court should consider “various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise”).

For example, the District Court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” 2008 U.S. Dist. LEXIS 32281, *39, 48 (N.D. Ohio April 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” 2009 U.S. App. LEXIS 15517 at **16, 23. As the district court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect,” “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, *13-14 (N.D. Ohio Jan. 11, 2010).

Here, the Receiver respectfully submits that the Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver's causes of action against Mayer Brown. First, the trial court has already made preliminary findings to this effect, which reflect the trial court’s perspective in supervising and managing the Broward Litigation. See Exhibit 2, Broward Preliminary Order.

Second, while the Receiver believes he would prevail at trial, the litigation has been hard fought, and no outcome is guaranteed. Third, while time-consuming and expensive discovery remains to be taken, the parties have conducted enough discovery to make well-informed decisions at this stage. Fourth, the Settlement Agreement provides for payment of a substantial amount of funds and, indeed, a recovery of this amount is one of the largest, if not the largest, the Receiver is aware of for similarly situated federal court receivership actions. Fifth, the Receiver expects little to no opposition to the proposed Settlement Agreement, as discussed below. In sum, the Receiver believes that the outcome for the Receivership Entities will be better under the proposed Settlement Agreement than it would be if the Receiver was forced to proceed with litigation.

Based on the Receiver's due diligence, the terms of the proposed Settlement Agreement are fair and reasonable, representing a means of assuring a beneficial outcome for the Receivership Estate, and for all Approved Claimants.

VIII. CLAIMANT CONSENTS

As noted above, the Settlement Agreement has been the subject of a series of telephone conference calls during the past three months, with dozens of investors participating in each of the conference calls. The investors who have participated in those conference calls have expressed their support for the proposed Settlement, and the Receiver does not anticipate objections to the proposed Settlement from any of the investors who have participated in those conference calls. Based on the discussion with investors participating in those conference calls, the Receiver expects that the great majority of investors will support the proposed Settlement. The Receiver will be asking the investors to express their support in the form of written Consents to the proposed Settlement, and will advise the Court of the results of those efforts before the time set for the Court's hearing on this Motion

IX. OBJECTION PROCEDURE

As noted above, the determination of the fairness of a settlement is left to the sound discretion of the trial court. *See Sterling*, 158 F. 3d at 1202. Because "the substance and amount of opposition to the settlement" is a factor for the Court's consideration pursuant to the *Sterling* test, and the Receiver is not anticipating objections to the proposed settlement from any investors, as discussed above, the Receiver respectfully requests that the Court, in exercising its broad discretion, approve the Settlement Agreement with the following objection procedure.

The Receiver proposes: (1) posting this Motion and the Settlement Agreement on the Receiver's website; (2) mailing or emailing a copy of this Motion, the Settlement Agreement, and a Notice (as defined in the Settlement Agreement), the form of which is attached to the Settlement Agreement as Exhibit F, to all Approved Claimants, Bar Order Parties, and all counsel of record for any person who is, at the time of Notice, a party in the present action or the Broward Litigation within 5 days of an order approving this objection procedure; and (3) allowing thirty days (30) days from that date for any potential objections to be filed with the Court. See Settlement Agreement, Exhibit G. If the Court agrees with this process, the Receiver also proposes that, within ten (10) calendar days before any Final Approval Hearing, as defined in the Settlement Agreement, the Receiver shall cause to be filed with the Clerk of this Court a notice of his compliance with the foregoing.

X. INTENT TO MAKE DISTRIBUTION

If this Court approves the Settlement Agreement, the Receiver will return to the Broward Court to seek entry of the Final Judgment Order (the form of which is attached as Exhibit E to the Settlement Agreement), which would confirm that court's preliminary findings with respect to the Settlement and dismiss, with prejudice, the Broward Litigation against Mayer Brown. In conjunction with that process, it is the Receiver's intent to promptly and expeditiously move for

approval to make a distribution from the Initial Settlement Payment to Approved Claimants and to any additional claimants the Court approves in connection with the Non-Investor Claims Process that is currently ongoing. (See D.E. 417-5; D.E. 503.) The Settlement Agreement provides for distribution of the Settlement Amount pursuant to one or more Distribution Plan(s) approved by this Court; Mayer Brown and the Mayer Brown Released Parties will have no involvement in or responsibility for such distributions or the Distribution Plan(s). See Settlement Agreement ¶¶ 32, 52-54.

XI. JURISDICTION

The Receiver and Mayer Brown have agreed and request that this Court retain jurisdiction, as provided in Paragraph 70 of the Settlement Agreement, with respect to (i) the provisions or terms of this Agreement concerning this Motion, the Preliminary Approval & Scheduling Order, the Final Settlement Approval & Bar Order, the Notice, and the Distribution Plan, as well as (ii) matters involving the Federal Court's continuing jurisdiction over this matter and the activities and conduct of the Receiver.

XII. CONCLUSION

For the foregoing reasons, Daniel S. Newman, as Receiver, respectfully requests that this Court enter an Order substantially in the form of Exhibit G to the Settlement Agreement that (i) preliminarily approves the Settlement between the Receiver and Mayer Brown; (ii) approves the content and plan for publication and dissemination of the Notice (Exhibit F to the Settlement Agreement); (iii) sets the date by which any objection to the Settlement or the Settlement Agreement may be filed; (iv) schedules a hearing, should this Court determine that a hearing is necessary, to consider final approval of the Settlement and entry of the Final Settlement Approval & Bar Order (Exhibit D to the Settlement Agreement); and grants any further relief the Court deems just and proper.

At the conclusion of the process set out in the Preliminary Approval and Scheduling Order, the Receiver respectfully requests that the Court enter the Final Settlement Approval & Bar Order.

Dated: November 3, 2020.

Respectfully submitted,

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By: /s/ Jonathan Etra
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Florida Bar No. 0686905
Christopher Cavallo, Esq.
Florida Bar No. 0092305

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive Notices of Electronic Filing.

By: /s/ Jonathan Etra
Jonathan Etra, Esq.

SERVICE LIST

<p>Robert K. Levenson, Esq. Miami Regional Trial Counsel Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 305-982-6341 (direct dial) 305-536-4154 (facsimile) levensonr@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i> <u>Service via CM/ECF</u></p>	<p>Gabrielle D'Alemberte, Esq. The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com <i>Counsel for William & Pamela Gunlicks</i> <u>Service via CM/ECF</u></p>
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Exhibit 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between (i) Daniel S. Newman, solely in his capacities as (a) the court-appointed receiver for the Founding Partners Entities (defined below), and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors,” defined below (Daniel S. Newman is referred to herein as the “Receiver”); and (ii) Mayer Brown LLP (“Mayer Brown”) (The Receiver, on the one hand, and Mayer Brown, on the other hand, are referred to in this Agreement individually as a “Party” and together as the “Parties”);

WHEREAS, on April 20, 2009, the U.S. Securities and Exchange Commission (the “SEC”) filed *SEC v. Founding Partners Capital Management Co. and William L. Gunlicks*, Civil Action No. 2:09-cv-00229-JES-SPC (M.D. Fla.) (the “SEC Action”), alleging that Founding Partners Capital Management Company and William L. Gunlicks (“Gunlicks”) had engaged in fraudulent conduct affecting investors in one or more of the Founding Partners Funds (defined below);

WHEREAS, in an order dated April 20, 2009, in the SEC Action (ECF No. 9), the United States District Court for the Middle District of Florida (the “Federal Court”) granted the SEC’s Emergency Motion for the Appointment of a Receiver over the Founding Partners Entities, with the powers, duties, and authority to take possession of, and administer and manage the business affairs of, the assets, rights of action, properties, estates, books and records, and other tangible and intangible monies and property of the Founding Partners Entities (the “Receivership Estate”), all as set forth further in that order;

WHEREAS, in that same order (ECF No. 9), a receiver was appointed for the Receivership Estate, with all the powers described and enumerated in that order, as amended by an order in that same matter, dated May 20, 2009 (ECF No. 73);

WHEREAS, in a May 20, 2009 order (ECF No. 73), Daniel S. Newman was appointed as Receiver, replacing the prior receiver for the Founding Partners Entities;

WHEREAS, Mr. Newman has served as Receiver continuously since his appointment on May 20, 2009 and continues to so serve;

WHEREAS, on December 30, 2010, the Receiver filed a Complaint in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Broward Court"), with the case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the "Litigation"), asserting claims of the Founding Partners Funds and naming Mayer Brown and Ernst & Young LLP ("EY") as defendants;

WHEREAS, the Receiver amended his Complaint in the Litigation on four occasions (April 7, 2011, April 25, 2011, August 3, 2015, and February 1, 2018) and, in the course of such amendments, added claims of 38 Assignors;

WHEREAS, the Fourth Amended Complaint in the Litigation dated February 1, 2018 asserts claims against Mayer Brown for negligence, aiding and abetting breaches of fiduciary duties, aiding and abetting a fraud, aiding and abetting breaches of statutory duties, fraud, and negligent misrepresentation;

WHEREAS, the Broward Court entered various interlocutory orders at various points in the Litigation, with some decisions in favor of Mayer Brown and some decisions in favor of the Receiver, and discovery in the Litigation remained open and incomplete prior to the July 2020 stay of the Litigation, which was imposed to facilitate the Parties' effort to document their Settlement into this Agreement;

WHEREAS, certain disputes also have arisen between Mayer Brown and Gunlicks, the former CEO of Founding Partners Capital Management Company, including in relation to his alleged rights under 735 ILCS 5/8-2005 (the “Gunlicks File Claim”), Mayer Brown’s payment of costs related to the production of Gunlicks’ documents pursuant to Mayer Brown’s subpoena, and other disputes asserted in the case captioned *Newman v. Mayer Brown LLP*, Case No. 2017 L 009824 (Cook Cty. Cir. Ct., Ill.) (the “Subpoena Proceeding”), a matter in which Gunlicks is represented by William Delaney of Delaney Law, P.C. (Delaney and Delaney Law P.C. are, collectively, “Delaney”);

WHEREAS, Mayer Brown expressly denies any and all allegations of wrongdoing, fault, liability, or damages whatsoever and is entering into this Agreement solely to avoid the burden, very substantial expense, and risks of litigation;

WHEREAS, the Receiver has conducted an investigation into the facts and the law relating to the Litigation, including but not limited to substantial discovery in the Litigation, and, after considering the results of that investigation and discovery and the benefits of this Settlement, as well as the burden, very substantial expense, and risks of litigation, (i) has concluded that a settlement with Mayer Brown under the terms set forth below is fair, reasonable, adequate, and in the best interests of the Receivership Estate, the Assignors, and the Founding Partners Entities, and (ii) has agreed to enter into the Settlement and this Agreement and to use his best efforts to effectuate the Settlement and this Agreement;

WHEREAS, the Parties desire to fully, finally, and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them;

WHEREAS, the Parties have engaged in extensive, good-faith, and arm’s-length negotiations, which have included the Parties’ participation in two separate formal mediations (the first in 2014 with Jonathan B. Marks of Marks ADR in Washington, D.C., and the second in 2019

with Lawrence Watson of Upchurch, Watson, White & Max in Orlando, Florida) and in further discussions in 2020 that led to the Settlement and this Agreement; and

WHEREAS, absent approval of this Settlement, the Litigation will likely take many more years and cost the Parties millions of dollars to litigate to final judgment and through appeals, and the outcome of all such litigation would be uncertain;

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Agreement Date.

1. This Agreement shall take effect on the “Agreement Date,” which shall be the date on which the last of all of the following have occurred: (a) both Parties have signed this Agreement; (b) FP Offshore, Ltd. (“FP Offshore”) has signed the consent to this Agreement and release of Settled Claims that is attached hereto as **Exhibit A**; (c) Gunlicks, Delaney, and Mayer Brown have signed the release that is attached hereto as **Exhibit B**; and (d) EY and Mayer Brown have signed the release agreement that is attached hereto as **Exhibit H**. The Agreement Date is a separate date from the Settlement Effective Date, as defined below, and is intended to bind the Parties to the terms of this Agreement as of the Agreement Date, although certain provisions shall not become effective until the Settlement Effective Date, as set forth herein.

II. Terms Used in this Agreement.

The following terms used in this Agreement have the following meanings:

2. “Approved Claimant” means any Person who owns an approved right to receive funds from the Receivership Estate, which right has been determined as a result of the approval of a Proof of Claim in whole or in part by the Federal Court pursuant to the Federal Court’s Opinion and Order dated July 3, 2014, Approving Receiver’s Recommendations and Fairness of

Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws, reflected as an “Allowed Amount” on Revised Schedule A (SEC Action, ECF No. 417-5). “Approved Claimant” also includes any Person (including but not limited to FP Offshore, Credit Value Partners, LLC, and CVP SPV LLC) who did not file or serve a Proof of Claim on his, her, or its own behalf but who has received the benefit or ownership of such Proof of Claim through a transfer that has been acknowledged in writing by the Receiver and in an order entered by the Federal Court.

3. “Assignors” means all investors in one or more of the Founding Partners Entities who have assigned to the Receiver all rights associated with certain causes of action, regardless of whether the Receiver has chosen to litigate or file such causes of action. For the avoidance of doubt, the term “Assignors” includes the 38 individuals or entities identified in Paragraph 1 of the Fourth Amended Complaint filed in the Litigation: (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) Snyder 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. Also for the avoidance of doubt, for the purposes of this Agreement, the

term “Assignors” also includes Barry Wallach IRA Rollover; Cooper Investments I; Phillip Cooper; Three Sprouts LLC; FP Mallard Drive Partners; Elayne and Herbert Laufman; Walter Kreiseder; Leavitt Capital Management; Barry Meister; Robert Scot Building Venture; Ronald Berman; San Ysidro Investors; Bruce Stein; Allan Colman; Bruce R. Passen; Cathy Passen; Howard Friend; Judy Sommers Trust; and Steven Sandler, all of whom have executed assignment agreements with the Receiver but who are not listed in Paragraph 1 of the Fourth Amended Complaint.

4. “Bar Order Parties” means (1) the Receiver; (2) the Receivership Estate; (3) the Founding Partners Entities; (4) the Assignors; (5) the Approved Claimants; (6) the Unapproved Claimants; (7) EY; (8) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (9) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks. The inclusion of any particular Person within the definition of “Bar Order Parties” for purposes of this Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more Founding Partners Funds, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

5. “Distribution Plan” means any plan or plans hereafter approved or ordered by the Federal Court for the distribution of the Settlement Amount (other than for attorneys’ fees or costs, if any, that are awarded by the Federal Court from the Settlement Amount) to Approved Claimants.

6. “Final” means after the conclusion of, or the expiration of, any right of any Person to pursue any and all possible forms and levels of appeal, reconsideration, or review, including by a court of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise. The Final Settlement Approval & Bar Order (defined in Paragraph 7) shall include findings, in substantially the form set out in Section III.D of **Exhibit D** hereto, to support entry of such order as a permanent injunction appealable under 28 U.S.C. § 1292(a)(1) and an immediately appealable partial final judgment pursuant to Federal Rule of Civil Procedure 54(b), and the Judgment Order (defined in Paragraph 13) shall indicate it is a partial final judgment resolving all claims against Mayer Brown consistent with Florida Rule of Appellate Procedure 9.110(k). The Final Settlement Approval & Bar Order, and the Judgment Order, will become Final as set forth in this paragraph as though such orders were entered as a judgment at the end of a case. The continuing pendency of the SEC Action and the Litigation shall not be construed as preventing either the Final Settlement Approval & Bar Order or the Judgment Order from becoming Final.

7. “Final Settlement Approval & Bar Order” shall mean an order, entered by the Federal Court in the SEC Action, that (i) overrules all objections, if any, to the Settlement, this Agreement, or the releases, bars, injunctions, and restraints requested in the Approval Motion and contemplated by this Agreement; (ii) approves the Settlement and its terms as set out in this Agreement, and includes findings of fact and conclusions of law to support such approval; (iii) approves entry of the releases, bars, injunctions, and restraints requested in the Approval Motion and contemplated by this Agreement, and includes findings of fact and conclusions of law to support such approval; and (iv) provides substantially the same terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) as those set out in the partial proposed Final Settlement Approval & Bar Order that is attached hereto as **Exhibit D**.

8. “Forum” means any court, adjudicative body, tribunal, or jurisdiction, whether its nature is federal, foreign, state, administrative, regulatory, arbitral, local, or otherwise.

9. “Founding Partners Entities” means Founding Partners Capital Management Company and the Founding Partners Funds (defined below).

10. “Founding Partners Funds” means Founding Partners Stable-Value Fund, L.P. (formerly known as Founding Partners Multi-Strategy Fund, L.P.); Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (formerly known as Founding Partners Equity Fund, L.P.).

11. “Hearing” means a formal proceeding before the United States District Judge having jurisdiction over the SEC Action.

12. “Interim Order” shall mean the proposed order for entry in the Litigation that is attached hereto as **Exhibit C**.

13. “Judgment Order” shall mean the proposed order for entry in the Litigation that is attached hereto as **Exhibit E**.

14. “Mayer Brown Released Parties” means Mayer Brown, Mayer Brown LLP, Mayer Brown (a Hong Kong partnership), Mayer Brown (Beijing) Intellectual Property Agency Co. Ltd., Mayer Brown (Singapore) Pte. Limited (No.201114070Z), Mayer Brown (Thailand) Limited, Mayer Brown (Vietnam) LLC, Mayer Brown Beijing Representative Office, HK, Mayer Brown Consulting (Singapore) Pte. Ltd. (No.201407965N), Mayer Brown Europe-Brussels LLP, Mayer Brown Gaikokuho Jimu Bengoshi Jimusho (GJBJ), Mayer Brown International LLP, Mayer Brown Mexico S.C. (a State of Durango Sociedad Civil), Mayer Brown Shanghai Representative Office (Hong Kong), Mayer Brown, a French Corporation (SELAS), Tauil & Chequer Advogados — Brasília, Tauil e Chequer Advogados — Rio de Janeiro, Tauil e Chequer Advogados (Vitoria), and Tauil e Chequer Sociedade de Advogados (São Paulo), as well as all of their respective present

and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Mayer Brown Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims. For the avoidance of doubt, “Mayer Brown Released Parties” does not include EY or any other Person, besides Mayer Brown or its counsel in the Litigation, against whom the Receiver, before the Agreement Date, has provided written notice to Litigation counsel for Mayer Brown that he has filed a claim or cause of action that remains pending in any Forum. It is the intent of the Parties that nothing in this Agreement have the effect of releasing the claims the Receiver has asserted and that remain pending against EY in the Broward Court or in an arbitral forum.

15. “Notice” means a communication, in substantially the form attached hereto as **Exhibit F** (or as otherwise agreed in writing by the Parties, or as directed by the Federal Court), describing (a) the material terms of the Settlement and this Agreement; (b) the rights and obligations of the Bar Order Parties with regard to the Settlement and this Agreement; (c) the deadline for the filing of objections to the Settlement, this Agreement, and the Final Settlement Approval & Bar Order; and (d) the date, time, and location of the Hearing (if the Federal Court determines that a Hearing is required), to consider final approval of the Settlement and this Agreement and entry of the Final Settlement Approval & Bar Order.

16. “Person” means any individual, entity, governmental authority, agency or quasi-governmental person or entity, worldwide and of any type, including, without limitation, any

individual, partnership, corporation, limited liability company, estate, trust, committee, fiduciary, association, proprietorship, organization, or business, regardless of location, residence, or nationality.

17. “Proof of Claim” means a claim submitted to the Receiver pursuant to the claims process approved by the Federal Court in the SEC Action, as set forth in the Federal Court’s Order Approving Receiver’s Motion for Approval of Claims Process, dated August 28, 2012 (ECF No. 349).

18. “Receiver Released Parties” means the Receiver and the Assignors, and each of their counsel. “Receiver Released Parties” also includes each of the foregoing persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Receiver Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

19. “Releasor” means any Person granting a release of any Settled Claim.

20. “Settled Claim(s)” means any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Releasor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by

reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) any of the conduct complained of in the SEC Action or the Litigation; (ii) any of the Founding Partners Entities; (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities; (iv) Mayer Brown's relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (v) Mayer Brown's provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (vi) Mayer Brown's relationship with, services for, or conduct with respect to MasterFactor, Inc. and/or any of its personnel, or Mayer Brown's provision of services to or for the benefit of or on behalf of MasterFactor, Inc.; (vii) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (viii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees; (ix) any request or demand pursuant to 735 ILCS 5/8-2005 or similar statutes, rules, or authorities related to or arising from Mayer Brown's relationship with, services for, or conduct with respect to MasterFactor, Inc., any one or more of the Founding Partners Entities, and/or any of the personnel of any of the Founding Partners Entities, including but not limited to Gunlicks; (x) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Mayer Brown, Mayer Brown's counsel, or any other Person; or (xi) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending

or was commenced in any Forum on or after March 25, 2009. “Settled Claims” specifically includes, without limitation, all claims (or facts relating thereto) that each Releasor does not know or suspect to exist in his or its favor at the time of release, which, if known by that Person, might have affected his or its decisions with respect to this Agreement and the Settlement (“Unknown Claims”). With respect to the Settled Claims (which include the Unknown Claims), each Releasor expressly waives, releases, and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Each Releasor acknowledges that he or it may hereafter discover facts different from, or in addition to, those which such Releasor now knows or believes to be true with respect to the Settled Claims, but nonetheless agrees that this Agreement, including the releases granted herein, will remain binding and effective in all respects notwithstanding such discovery. Unknown Claims include contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. These provisions concerning unknown and unsuspected claims and the inclusion of Unknown Claims in the definition of Settled Claims were separately bargained for and are an essential element of this Agreement and the Settlement. Each Releasor understands and acknowledges the significance and the consequences of this waiver and confirms that he or it either has discussed or has been given an opportunity to discuss such matters with counsel of his or its choice.

21. “Settlement” means the agreed resolution of the Settled Claims in the manner set forth in this Agreement.

22. “Settlement Amount” means Three Hundred and Ninety Million United States Dollars (\$390,000,000.00).

23. “Settlement Effective Date” means the date on which the last of all of the following have occurred:

a. Payment has been made into the account, designated for the purpose of holding funds in escrow pending the date such funds are due to be paid under Section IV, of the amounts separately committed in writing by each of Mayer Brown’s insurance carriers for the relevant policy year, which payments are due to the referenced account no later than sixty (60) days after the Agreement Date;

b. All amounts separately committed in writing by each of Mayer Brown’s insurance carriers for the relevant policy year are immediately available to be disbursed to the Receiver within seven (7) days of the Settlement Effective Date pursuant to Section IV herein;

c. Entry in the Litigation of an order in substantially the form of the Interim Order (which is **Exhibit C** hereto);

d. Entry in the SEC Action of the Final Settlement Approval & Bar Order, which, among other things, provides substantially the same terms, findings, and relief (including all specified releases, bars, restrains, and injunctions) as those set out in the partial Final Settlement Approval & Bar Order that is attached hereto as Exhibit D;

e. Entry in the Litigation of an order in substantially the form of the Judgment Order (which is **Exhibit E** hereto);

f. The Final Settlement Approval & Bar Order and the Judgment Order have both become Final; and

g. The Gunlicks File Claim has been dismissed with prejudice, such dismissal has become Final, and the Subpoena Proceeding has been closed, which matters are to occur pursuant to the release between Mayer Brown, Gunlicks, and Delaney that is attached hereto as **Exhibit B** (and which shall have been executed on or before the Agreement Date).

Items (a) through (g) of this Paragraph 23, along with the execution of the consent and release between FP Offshore and Mayer Brown that is attached hereto as **Exhibit A** and the execution of the release agreement between EY and Mayer Brown that is attached hereto as **Exhibit H** (both of which shall have been executed on or before the Agreement Date), shall be referred to herein as the “Conditions.”

24. “Taxes” means any and all taxes, whether federal, state, local, or other taxes related to the Settlement or the Settlement Amount, and costs incurred in connection with such taxation including, without limitation, the fees and expenses of tax attorneys and accountants.

25. “Unapproved Claimant” means any Person who asserted the right to receive funds from the Receivership Estate by filing or serving a Proof of Claim, but the Proof of Claim was rejected, denied, or disallowed by the Federal Court pursuant to the Federal Court’s Opinion and Order dated July 3, 2014 (SEC Action, ECF No. 417-5).

III. Resolution of the Litigation.

26. Dismissal of Litigation: The Litigation shall be fully and finally resolved and concluded and considered dismissed with prejudice as to Mayer Brown by the Judgment Order being entered in the Litigation and such Judgment Order becoming Final.

IV. Delivery of Settlement Amount.

27. No Obligation Unless Conditions Satisfied: Mayer Brown has no obligation to pay any money under this Agreement except if the Settlement Effective Date occurs. If any one of the Conditions does not occur, then, subject to the terms of Section XI herein, the Settlement Effective Date shall not arise, and Mayer Brown's obligation to pay money under this Agreement also shall not arise.

28. Delivery of First Settlement Payment: Within seven (7) days of the Settlement Effective Date, Mayer Brown shall make or cause to be made (including from the account described in Paragraph 23(a)) a payment to the Receiver of at least \$370 million of the Settlement Amount (the "First Settlement Payment"). The Receiver has been informed of the terms of the letter agreement between Mayer Brown and its insurance carriers for the funding of the account, described in Paragraph 23(a), for the purpose of holding funds in escrow pending the date such funds are due to be paid under this Section IV. Mayer Brown agrees that it will not modify the terms of that letter agreement without the Receiver's consent (which consent shall not be unreasonably withheld). Mayer Brown shall have the right, at its sole option, and without incurring any penalty of any kind, to deliver to the Receiver within thirty (30) days of the Settlement Effective Date: (i) the entire Settlement Amount, or (ii) an amount that exceeds the amount of the First Settlement Payment but does not pay the Settlement Amount in full, in which case the payments required by Paragraph 30 herein shall be prorated equally.

29. Interest: Beginning thirty-one (31) days after the Settlement Effective Date, Mayer Brown shall be charged interest on any portion of the Settlement Amount that has not yet been paid to the Receiver, at a rate of 3.25 percent in simple interest per year; except, however, that such interest shall not be charged on \$5 million of the outstanding portion of the Settlement Amount for the time period that is thirty-one (31) days after the Settlement Effective Date up to

and including the date that is one (1) year after the receipt by the Receiver of the First Settlement Payment. In no event shall Mayer Brown incur interest on any portion of the Settlement Amount prior to thirty-one (31) days after the Settlement Effective Date.

30. Annual Successive Payments: After the First Settlement Payment, Mayer Brown shall make (or cause to be made) four additional payments to the Receiver of \$5 million each, plus any interest that has then accrued pursuant to Paragraph 29 on the portion of the Settlement Amount that remains unpaid at the time of the payment, on the following schedule: (i) the first payment shall be due no later than one (1) year of the receipt by the Receiver of the First Settlement Payment; (ii) the second payment shall be due no later than two (2) years of the receipt by the Receiver of the First Settlement Payment; (iii) the third payment shall be due no later than three (3) years of the receipt by the Receiver of the First Settlement Payment; and (iv) the fourth payment shall be due no later than four (4) years of the receipt by the Receiver of the First Settlement Payment. Mayer Brown shall have the right, at its sole option, and without incurring any penalty of any kind: (a) to accelerate this payment schedule by making payment(s) toward the Settlement Amount earlier than when such payments are due pursuant to this Paragraph 30, or (b) to make payment(s) toward the Settlement Amount that exceed the amount(s) then due pursuant to this Paragraph 30. No later than fifteen (15) business days before each payment is due pursuant to this Paragraph 30, the Receiver and Mayer Brown shall confer and reach agreement with respect to the amount of interest then due.

31. Payment Instructions: Each of the payments described in this Section IV shall be made to the Receiver by wire transfer in accordance with wire transfer instructions provided by the Receiver for purposes of receiving such payment. The Receiver shall provide Mayer Brown with such instructions for the First Settlement Payment no later than the Settlement Effective Date. No later than fifteen (15) business before each of the payments set forth in Paragraph 30 is due,

the Receiver shall contact Mayer Brown to confirm the wire instructions or provide new instructions, as the case may be.

V. Attorneys' Fees and Costs.

32. Fees and Costs: Counsel for the Receiver intend to make an application for payment of attorneys' fees, costs, and/or expenses. In no event will the Receiver seek from Mayer Brown or any of the Mayer Brown Released Parties, nor shall Mayer Brown or any of the Mayer Brown Released Parties have any obligation or liability to pay, any attorneys' fees, costs, or expenses that may be sought by, owed to, or approved for payment to the Receiver's counsel.

33. Settlement Not Dependent on Fee Award: The pendency of a request to the Federal Court or the Broward Court to approve a fee, cost, or expense award to the Receiver's counsel shall not prevent the Final Settlement Approval & Bar Order or the Judgment Order, as the case may be, from becoming Final. Any failure, in whole or in part, by the Federal Court or the Broward Court, as applicable, to approve a fee, cost, or expense award request made by the Receiver's counsel shall not prevent the Settlement Effective Date from occurring pursuant to Paragraph 23 and shall not be grounds for rescission or termination of the Settlement or this Agreement.

34. No Effect on Engagement Agreements: Nothing in this Agreement is intended to affect any contingency fee or engagement contract or agreement between the Receiver and his counsel, or the rights thereunder.

VI. Use and Management of Settlement Amount.

35. Management and Distribution of Settlement Amount: If and when the Settlement Amount is delivered to the Receiver pursuant to the terms of this Agreement, the Receiver shall receive and take custody of the Settlement Amount and shall maintain, manage, and distribute the proceeds from the Settlement Amount in accordance with the Distribution Plan(s) and/or orders entered by the Federal Court. Upon receipt of the Settlement Amount or payments toward the

Settlement Amount as set forth in Section IV, the Receiver shall be responsible for all Taxes, fees, and expenses that may be due with respect to the Settlement Amount or the management, use, administration, or distribution of the Settlement Amount.

36. No Liability: Upon payment of the Settlement Amount or any portion thereof as provided in Section IV, Mayer Brown and the Mayer Brown Released Parties shall have no liability, obligation, or responsibility whatsoever with respect to the investment, management, use, administration, or distribution of the Settlement Amount or any portion then paid, including, but not limited to, the costs and expenses of such investment, management, use, administration, or distribution of the Settlement Amount, and any Taxes arising therefrom or relating thereto. Nothing in this Paragraph 36 shall alter Mayer Brown's obligations to deliver the Settlement Amount to the Receiver pursuant to the terms of this Agreement.

VII. Motions in the Broward Court.

37. Stay of Proceedings: On July 15, 2020, the Parties jointly filed a motion in the Broward Court seeking to stay all proceedings in the Litigation in light of the Parties' settlement in principle. The Broward Court entered an order granting the requested stay on July 16, 2020. The Parties agree to jointly advocate for maintenance of the stay of the Litigation pending the Federal Court's approval of the Settlement and this Agreement and the eventual dismissal of the Litigation against Mayer Brown, and to cooperate with each other in seeking and maintaining such stay until the Litigation against Mayer Brown is dismissed pursuant to this Agreement.

38. Motion for Initial Findings Concerning Settlement: Within fifteen (15) days of the Agreement Date, the Receiver shall file a motion in the Broward Court seeking entry of the Interim Order, substantially in the form attached hereto as **Exhibit C**, which includes the following findings intended to facilitate the approval process in the Federal Court: (i) the Receiver and Mayer Brown vigorously litigated the Receiver's claims against Mayer Brown over the course of many

years; (ii) the Settlement was entered into in good faith, without fraud or collusion, and with the Parties assisted by sophisticated counsel; and (iii) on a preliminary basis, the Settlement and this Agreement appear fair, reasonable, and adequate. In advance of filing such motion and its accompanying papers, the Receiver shall provide Mayer Brown a reasonable opportunity to review and comment on such motion papers. Any description of the Litigation or events in the Litigation in the motion papers shall be consistent with the Parties' desire to put their disputes behind them. The Receiver has sole and ultimate authority over the content of the final motion papers, but agrees to consider in good faith any comments provided by Mayer Brown in the course of its advance review.

39. Motion for Approval and Entry of Judgment: Within ten (10) days of the Federal Court's entry of the Final Settlement Approval & Bar Order, the Receiver shall file a motion in the Broward Court seeking entry of the Judgment Order, in the form attached hereto as **Exhibit E**, which includes provisions that: (i) adopt the findings of the Federal Court with respect to the adequacy and appropriateness of the Notice and the fairness, reasonableness, and adequacy of the Settlement, to the extent the Broward Court's approval is necessary to effectuate the settlement of any of the Settled Claims that have been or may be characterized as derivative or asserted in a derivative capacity; (ii) find that this Agreement and the Settlement were entered into in good faith such that Mayer Brown is entitled to the protections provided to settling alleged tortfeasors under Fla. Stat. § 768.31(5); (iii) state that each Party shall bear its own costs, expenses, and attorneys' fees; (iv) dismisses with prejudice all claims for relief as between the Receiver and Mayer Brown; and (v) deems withdrawn all pending motions (other than the motion being granted by the Judgment Order itself) filed by the Receiver and Mayer Brown in the Litigation. In advance of filing such motion and its accompanying papers, the Receiver shall provide Mayer Brown a reasonable opportunity to review and comment on such motion papers. Any description of the

Litigation or events in the Litigation in the motion papers shall be consistent with the Parties' desire to put their disputes behind them. The Receiver has sole and ultimate authority over the content of the final motion papers, but agrees to consider in good faith any comments provided by Mayer Brown in the course of its advance review.

VIII. Motion in the SEC Action; Notice.

40. Approval Motion: No later than fifteen (15) days from the entry of the Interim Order, unless otherwise agreed by the Parties in writing, the Receiver shall file in the SEC Action a motion (the "Approval Motion") that requests:

a. Entry of an order substantially in the form attached hereto as **Exhibit G** (the "Preliminary Approval & Scheduling Order") that (i) preliminarily approves the Settlement, (ii) approves the content and plan for publication and dissemination of Notice, (iii) sets the date by which any objection to the Settlement or this Agreement must be filed, and (iv) schedules a Hearing (if the Federal Court determines that a Hearing is required) to consider final approval of the Settlement and entry of the Final Settlement Approval & Bar Order; and

b. Following such procedure, entry of the Final Settlement Approval & Bar Order.

In advance of filing the Approval Motion and its accompanying papers, the Receiver shall provide Mayer Brown a reasonable opportunity to review and comment on such papers. Any description of the Litigation or events in the Litigation in the motion papers shall be consistent with the Parties' desire to put their disputes behind them. The Receiver has sole and ultimate authority over the content of the final motion papers, but agrees to consider in good faith any comments provided by Mayer Brown in the course of its advance review.

41. Bar Order Necessary to Settlement: The Parties represent and warrant that entry of the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) that are set out in the partial proposed Final Settlement Approval & Bar Order that is attached hereto as **Exhibit D** is a necessary condition of their Settlement. In particular, Mayer Brown is not willing to agree to the Settlement or this Agreement (including its requirement for the payment of the very substantial Settlement Amount) without the assurance of “total peace” in relation to the Settled Claims, and the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) that are set out in the partial proposed Final Settlement Approval & Bar Order that is attached hereto as **Exhibit D** are necessary to provide Mayer Brown and the Mayer Brown Released Parties such “total peace.”

42. Notice: With respect to the content and plan for publication and dissemination of Notice, the Receiver will propose in the Approval Motion that Notice in substantially the form attached hereto as **Exhibit F** be sent via electronic mail, first-class mail or international delivery service to all Bar Order Parties, using the contact information in the Receiver’s files; sent via electronic service to all counsel of record for any Person who is, at the time of Notice, a party in the SEC Action or the Litigation; and posted on the website of the Receiver along with copies of this Agreement and all public filings made in the Federal Court relating to the Settlement, this Agreement, and approval of the Settlement.

43. Notice Preparation and Dissemination: The Receiver shall be responsible for the preparation and dissemination of the Notice pursuant to this Agreement and in accordance with the directions of the Federal Court. In the case of any refusal or failure by the Receiver to prepare and disseminate Notice pursuant to this Agreement or as directed by the Federal Court, Mayer Brown shall not have any claim against the Receiver other than the ability to seek specific performance from the Federal Court in the SEC Action (and Mayer Brown may seek such relief

without having to formally intervene in the SEC Action). To the extent the Receiver becomes aware that he has been unable to deliver either email or mailed Notice to any Bar Order Party despite his best efforts to do so (such as because the Receiver has inaccurate contact information for such Bar Order Party), the Receiver shall notify Mayer Brown of the identity of the Bar Order Parties to whom such personal Notice was not effectuated, and the Parties shall work together in good faith to determine if further efforts to effectuate such Notice should be or can be undertaken. The Receiver shall maintain documentation of his efforts to fulfill the dissemination of Notice that is required by this Agreement and the Federal Court. The Parties do not intend, by this Agreement, to give any Person, other than Mayer Brown, any right or recourse against the Receiver in connection with the Notice process.

44. No Recourse Against Mayer Brown: No Bar Order Party or any other Person shall have any recourse against Mayer Brown or the other Mayer Brown Released Parties with respect to any claims that may arise from or relate to the Notice process. Mayer Brown and the rest of the Mayer Brown Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice, the distribution of the Notice, or the Notice process.

IX. Resolution of Subpoena Proceeding and the Gunlicks File Claim.

45. Gunlicks File Claim: One of the Conditions is the resolution of the Gunlicks File Claim and the Subpoena Proceeding consistent with the attached **Exhibit B**. Mayer Brown and the Receiver agree to cooperate in taking all reasonable steps to cause the Cook County Court to enter an order that dismisses the Gunlicks File Claim with prejudice, deems all pending motions withdrawn as moot, provides that each party is to bear its own fees, costs, and expenses, and closes the Subpoena Proceeding. Mayer Brown and the Receiver may not challenge such order, or encourage or assist any Person (including but not limited to Gunlicks) in challenging such order.

X. Cooperation in Seeking Settlement Approval.

46. Parties to Advocate: The Receiver shall take all reasonable steps to advocate for the Federal Court to approve the Settlement, the terms of this Agreement, and the Final Settlement Approval & Bar Order. Mayer Brown shall have the same obligation to the extent it chooses to appear in the SEC Action, as well as an obligation to assist the Receiver, as he may so request, in advocating for the Federal Court to approve the Settlement, the terms of this Agreement, and the Final Settlement Approval & Bar Order. Both Parties shall take all reasonable steps to advocate for the Broward Court to enter the Interim Order and the Judgment Order.

47. No Challenge: The Parties shall not challenge the approval of the Settlement, the Interim Order, the Final Settlement Approval & Bar Order, or the Final Judgment Order, nor shall they encourage or assist any Person in challenging the Settlement, the Interim Order, the Final Settlement Approval & Bar Order, or the Final Judgment Order.

XI. Termination.

48. Conditions Necessary to Agreement: The Parties represent and acknowledge that all of the Conditions were necessary to the Parties' agreement to this Settlement, are each an essential term of the Settlement and this Agreement, and that the Settlement would not have been reached in the absence of these terms.

49. Termination: If any of the Conditions fails to come to pass (except as provided in Paragraph 50 below), then the Settlement and this Agreement (i) shall be deemed null and void and of no further effect whatsoever (except for the provisions of this Paragraph 49, and Paragraphs 65-68, which shall survive), (ii) shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and (iii) shall not be the subject of or basis for any claims by or against any Party. If this Agreement terminates pursuant to this Paragraph 49, then each Party shall be returned to the position such Party occupied immediately before executing this Agreement.

50. Material Modification to Orders: If the Federal Court or Broward Court requires or adopts a material modification or limitation as a condition of approving the Final Settlement Approval & Bar Order or the Judgment Order, or if the Final Settlement Approval & Bar Order or Judgment Order are modified or limited on appeal in a material way, then the Conditions shall have failed to come to pass, and the Settlement and this Agreement shall terminate pursuant to Paragraph 49; except that if such material modification or limitation occurs, the Parties agree to (i) consult with each other in good faith to determine if there are steps that can be taken to maintain the Settlement and this Agreement, including any modifications thereto that may be necessary and appropriate; and (ii) take steps to preserve the status quo as may be necessary during the period necessary for such consultation and discussion and any resulting dispute resolution process. If, despite such consultation efforts, the Parties are unable to resolve the issue or reach agreement on whether the Agreement has terminated pursuant to Paragraph 49, then such dispute shall be resolved pursuant to the dispute resolution process set forth in Section XVIII.

51. No Other Termination Right: The Parties do not have the right to withdraw from, or otherwise terminate, the Settlement or this Agreement for any reason other than as provided in this Section XI.

XII. Distribution Plan.

52. Duties: The Receiver, with the approval and guidance of the Federal Court, shall be solely responsible for preparing, filing a motion seeking approval of, and implementing the Distribution Plan, including, without limitation, receiving, managing, and disbursing the Settlement Amount. The Receiver owes no duties to Mayer Brown or the Mayer Brown Released Parties in connection with the distribution of the Settlement Amount or the Distribution Plan. Nothing in this Paragraph 52 alters the Receiver's obligations as set forth in Paragraph 35. In no event will the Receiver or the Receivership Estate be liable to Mayer Brown or the Mayer Brown

Released Parties for damages or the payment or re-payment of funds of any kind as a result of any alleged deficiency associated with the distribution of the Settlement Amount or the Distribution Plan.

53. Distribution by Check: As an additional confirmation of certain of the releases that the Mayer Brown Released Parties will receive under this Agreement and/or in the Final Settlement Approval & Bar Order, and not intended to alter the releases provided herein or in the Final Settlement Approval & Bar Order, the Receiver must include the following statement, without alteration, on the reverse of all checks sent to Approved Claimants pursuant to the Distribution Plan, above where the endorser will sign:

BY ENDORSING THIS CHECK AND RECEIVING SETTLEMENT PROCEEDS, I CONFIRM THAT I RELEASE ALL SETTLED CLAIMS, KNOWN OR NOT, ACCRUED OR NOT, AGAINST THE MAYER BROWN RELEASED PARTIES, ARISING FROM OR RELATING TO FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY, THE FOUNDING PARTNERS FUNDS, ANY OF THEIR PERSONNEL, OR ANY INVESTMENT IN OR WITH SUCH ENTITIES, AS SET FORTH MORE FULLY IN THE MAYER BROWN SETTLEMENT AGREEMENT.

If the Receiver makes any payments of the Settlement Amount to Approved Claimants (pursuant to the Distribution Plan) by wire instead of check, the Receiver shall require such Approved Claimant to confirm the wire instructions in writing and shall include the above language in such instructions, above where the endorser will sign, without alteration, except the Receiver shall replace the words “BY ENDORSING THIS CHECK” with “BY SIGNING BELOW.”

54. No Responsibility: Mayer Brown and the Mayer Brown Released Parties shall have no responsibility, obligation, or liability whatsoever with respect to (i) the creation, terms, interpretation, or implementation of the Distribution Plan; (ii) the administration of the Settlement; (iii) the management, investment, or distribution of the Settlement Amount (or any portion thereof)

or any other funds paid or received in connection with the Settlement, once the Settlement Amount (or any portion thereof) is paid to the Receiver pursuant to Section IV; (iv) the payment or withholding of Taxes that may be due or owing by the Receiver or the Receivership Estate once the Receiver receives the Settlement Amount or any portion thereof, or due and owing by any recipient of funds from the Settlement Amount; (v) the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid to or received by Approved Claimants in connection with the Settlement, this Agreement, or the Distribution Plan; or (vi) any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. As of the Settlement Effective Date, the Receiver, the Receiver Released Parties, as well as any and all other Persons for whom the Receiver has authority to act, fully, finally, and forever release, relinquish, and discharge Mayer Brown and the Mayer Brown Released Parties from any and all such responsibility, obligation, and liability.

XIII. Releases, Covenants Not to Sue, and Other Covenants.

55. Release by the Receiver: As of the Settlement Effective Date, the Receiver (including on behalf of the Receivership Estate, the Founding Partners Entities, and the Assignors, as well as any and all other Persons for whom the Receiver has authority to act) fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against the Mayer Brown Released Parties.

56. Release by Mayer Brown: As of the Settlement Effective Date, Mayer Brown fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against the Receiver Released Parties and against the FP Offshore Release Parties (as that term is defined in the FP Offshore consent and release attached hereto as **Exhibit A**).

57. Covenant Not to Sue by the Receiver: As of the Agreement Date, and except as may be necessary to seek the approvals and/or orders in the SEC Action, the Litigation, and the Subpoena Proceeding that are contemplated by this Agreement, the Receiver covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of the Mayer Brown Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the foregoing, however, the Receiver retains the right to sue to enforce or effectuate this Agreement, or to assert an alleged breach of this Agreement.

58. Covenant Not to Sue by Mayer Brown: As of the Agreement Date, and except as may be necessary to seek the approvals and/or orders in the SEC Action, the Litigation, and the Subpoena Proceeding that are contemplated by this Agreement, Mayer Brown covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of the Receiver Released Parties or the FP Offshore Release Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the foregoing, however, Mayer Brown retains the right to sue to enforce or effectuate this Agreement (or the consent and release provided by FP Offshore in **Exhibit A**), or to assert an alleged breach of this Agreement (or of the consent and release provided by FP Offshore in **Exhibit A**).

59. Complete Defense: Any Person released under this Agreement may plead this Agreement as a complete defense and bar to any Settled Claim brought in contravention hereof.

60. No Release of Obligations Under Agreement: Notwithstanding anything to the contrary in this Agreement, the releases and covenants contained in this Agreement do not release the Parties' rights and obligations under this Agreement or the Settlement.

XIV. Waiver of Further Discovery.

61. No Additional Discovery: As of the Agreement Date, the Receiver shall be deemed to have waived all further rights, if any, to take or request discovery, including but not limited to testimony or documents, from Mayer Brown (or any current or former Mayer Brown personnel) in relation to or concerning the Litigation or the Settled Claims, except (i) in any proceeding related to disputes under or the enforcement of this Agreement; and (ii) to the extent the Receiver reasonably determines he requires additional discovery from Mayer Brown (or any current or former Mayer Brown personnel) to respond to arguments or allegations made by EY in connection with the Receiver's pending claims against EY. To the extent the Receiver seeks discovery from Mayer Brown (or any current or former Mayer Brown personnel) pursuant to (ii) in this paragraph, the following shall apply:

a. The Receiver agrees that any discovery he requests from Mayer Brown (or any current or former Mayer Brown personnel) shall be as narrowly tailored as possible under the circumstances;

b. The Receiver agrees to tailor any discovery he requests from Mayer Brown (or any current or former Mayer Brown personnel) to minimize, to the greatest possible extent under the circumstances, the burden imposed on Mayer Brown (and/or its current or former personnel) in responding to such requests;

c. The Receiver agrees not to seek the same or duplicative discovery from Mayer Brown (or any current or former Mayer Brown personnel) in multiple proceedings against EY (*e.g.*, the Receiver agrees not to seek discovery from Mayer Brown in connection with an arbitration proceeding against EY and then seek the same or duplicative discovery again from Mayer Brown in connection with the Litigation against EY), and to object to any efforts by EY to seek from Mayer Brown (or any current or former Mayer Brown personnel) the same or duplicative discovery in multiple proceedings;

d. The Receiver agrees to facilitate the authentication of any Mayer Brown documents by correspondence or stipulation, and to encourage EY to do so (and Mayer Brown agrees to reasonably cooperate in connection with such efforts);

e. The Receiver agrees not to seek testimony from Mayer Brown itself (*i.e.*, through Florida Rule of Civil Procedure 1.310(b)(6) or similar rules) or any Mayer Brown witness who was deposed in the Litigation, except (i) to the extent such existing testimony is determined to be not admissible against EY, and the seeking of such testimony by the Receiver is otherwise consistent with the requirements of this Section XIV, and (ii) the Receiver may cross-examine any Mayer Brown witness (or a Rule 1.310(b)(6) representative of Mayer Brown) if EY deposes any Mayer Brown witness previously deposed in the Litigation or deposes Mayer Brown itself pursuant to Rule 1.310(b)(6) or similar rules;

f. The Receiver agrees that any deposition that he may seek of Mayer Brown (*i.e.*, a deposition sought under Florida Rule of Civil Procedure 1.310(b)(6) or similar rules) or of any current or former Mayer Brown personnel shall be limited in duration to a total of seven (7) hours, occurring in one sitting on a single day, unless Mayer Brown and the deponent agree otherwise in writing;

g. The Receiver agrees to use his best efforts to avoid seeking discovery from Mayer Brown (or any current or former Mayer Brown personnel) that he sought or that he already obtained in the Litigation prior to the Agreement Date;

h. The Receiver agrees to provide Mayer Brown with ample notice of his intent to seek discovery from Mayer Brown (or any current or former Mayer Brown personnel) and then to negotiate with Mayer Brown in good faith concerning the requested discovery, including but not limited to the scope of the requested discovery and whether the requested information can be obtained in a less burdensome manner; and

i. The Receiver agrees that Mayer Brown may appear in the arbitration proceeding(s) against EY or in the Litigation (or in any court that issues a subpoena to Mayer Brown to facilitate discovery in the arbitration against EY) if Mayer Brown believes, in its sole discretion, that it (or its affected current or former personnel) has a right to object to the discovery the Receiver seeks, including on the basis that the requested discovery violates the provisions of this Paragraph 61.

XV. Representations and Warranties.

62. No Additional Claims: The Receiver represents that he does not know of, and has not filed or asserted, any claim or potential claim that he owns, possesses, or has the authority to assert (on behalf of the Receivership Estate, the Founding Parties Entities, the Assignors, or otherwise) against Mayer Brown or any of the other Mayer Brown Released Parties that is not being released pursuant to the terms of this Agreement and/or the Final Settlement Approval & Bar Order. The Receiver further represents that he does not know of any claim or potential claim against Mayer Brown or any of the other Mayer Brown Released Parties that is within the scope of the Settled Claims and that is not being released pursuant to the terms of this Agreement, the consent and release from FP Offshore attached as **Exhibit A** hereto, the release between Mayer

Brown, Gunlicks, and Delaney attached as **Exhibit B** hereto, the release agreement between Mayer Brown and EY attached as **Exhibit H** hereto, and/or the Final Settlement Approval & Bar Order. Mayer Brown represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against the Receiver, any of the other Receiver Released Parties, or any of the FP Offshore Release Parties that is not being released pursuant to the terms of this Agreement and/or the Final Settlement Approval & Bar Order.

63. No Assignment, Encumbrance, or Transfer: The Receiver represents and warrants that he is the owner of the Settled Claims that he is releasing under this Agreement (including the Settled Claims of Assignors that have been assigned to the Receiver) and that he has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Settled Claims that he is releasing under this Agreement. Mayer Brown represents that it is the owner of the Settled Claims that it is releasing under this Agreement and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Settled Claims that it is releasing under this Agreement.

64. Authority: Each person executing this Agreement or any related documents on behalf of an estate or entity represents and warrants that he or she has the full authority to execute the documents on behalf of the estate or entity each represents and that each has the authority to take appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms.

XVI. No Admission of Fault or Wrongdoing.

65. The Settlement, this Agreement, and the negotiation and mediation thereof, shall in no way constitute, be construed as, or be evidence of an admission or concession of any violation

of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses asserted or that could have been asserted in the Litigation or any other proceeding relating to any Settled Claim, or any other proceeding in any Forum. The Settlement and this Agreement are a resolution of disputed claims in order to avoid the risk and very substantial expense of protracted litigation. The Settlement, this Agreement, and evidence thereof shall not be used, directly or indirectly, in any way, in the Litigation, the SEC Action, or in any other proceeding, other than to seek the orders and approvals contemplated by this Agreement or to enforce the terms of the Settlement and this Agreement.

XVII. Publicity.

66. Media Inquiries: The Parties agree that, in order to facilitate their joint interest in finally resolving the substantial disputes between them, no Party or his or its counsel shall make any statements concerning any aspect of the Settlement, this Agreement, the Receiver's claims against Mayer Brown in the Litigation, or the Settled Claims, to the media or any media representative, except that the Parties and their counsel shall be permitted to provide a media representative who contacts a Party or his or its counsel seeking comment on such matters with (i) one or more statement(s) whose content is agreed upon in advance by the Parties, and/or (ii) confirmation that the Litigation and disputes among the Parties regarding the subject matter of the Litigation have been settled to the satisfaction of the Parties, without the admission of liability by any Party. No Party or his or its counsel may communicate with the media or a media representative so as to encourage interest in or publicity about the Settlement, this Agreement, the Receiver's claims against Mayer Brown in the Litigation, or the Settled Claims.

67. Statements by Others: Counsel for the Parties shall inform their respective stakeholders (the Receiver Released Parties, the Mayer Brown Released Parties, and the Bar Order

Parties) with whom they are discussing or are requested to discuss the Settlement or this Agreement, as well as any other Person (excluding the media or any media representative) who approaches the Party (or his or its counsel) to express interest in or discuss the Settlement, of the terms of Paragraph 66 and its importance to the Settlement and this Agreement. The Parties and their counsel, respectively, shall encourage the Persons referenced in the preceding sentence who are not expressly bound by Paragraph 66 to similarly avoid making statements to the media or media representative(s) concerning the Settlement, this Agreement, the Receiver's claims against Mayer Brown in the Litigation, or the Settled Claims.

68. Exclusions: Nothing in Paragraphs 66 and 67 is intended to curtail or limit in any way (i) the ability of any Person to make statements in the Federal Court or the Broward Court, or (ii) the ability of the Parties and their counsel to hold discussions with Approved Claimants or other Bar Order Parties as part of developing support for the Settlement and this Agreement or addressing actual or potential objections thereto.

XVIII. Dispute Resolution.

69. Mandatory Mediation: With respect to any dispute between the Receiver and Mayer Brown arising out of or relating to the Settlement or this Agreement (except for disputes arising between the Parties in relation to the provisions of Section XIV), the Parties shall first seek to mediate such disputes with a mediator acceptable to both Parties. The Parties agree to participate in such mediation in good faith over the course of not less than thirty (30) days, or such longer period as is necessary to allow the Parties to meet not less than two times with the mediator in an effort to resolve their dispute. The fees, costs, and expenses charged by the mediator shall be borne equally by the Parties. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to the mediation process contemplated by this paragraph.

70. Venue and Jurisdiction: The Broward Court shall retain jurisdiction and venue over the subject matter of this Agreement and the Parties for the duration of the performance of the terms and provisions of this Agreement, except that the Federal Court shall have jurisdiction with respect to (i) the provisions or terms of this Agreement concerning the Approval Motion, the Preliminary Approval & Scheduling Order, the Final Settlement Approval & Bar Order, the Notice, and the Distribution Plan; and (ii) matters involving the Federal Court's continuing jurisdiction over the SEC Action and the activities and conduct of the Receiver. After mediation efforts pursuant to Paragraph 69 have been exhausted, and excluding disputes arising between the Parties in relation to the provisions of Section XIV, the Broward Court shall be the exclusive jurisdiction for the resolution of any disputes between the Parties arising from or out of the Settlement or this Agreement, including but not limited to requests to construe or interpret this agreement or to effectuate or enforce compliance with its terms, except that the Federal Court shall have jurisdiction with respect to (i) the provisions or terms of this Agreement concerning the Approval Motion, the Preliminary Approval & Scheduling Order, the Final Settlement Approval & Bar Order, the Notice, and the Distribution Plan; and (ii) matters involving the Federal Court's continuing jurisdiction over the SEC Action and the activities and conduct of the Receiver. The Parties agree to conduct all proceedings in the Broward Court that are contemplated by this paragraph in as confidential of a manner as possible, including by designating filings "Highly Confidential" under the December 9, 2016 protective order entered in the Litigation. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to any proceedings in the Broward Court or the Federal Court contemplated by this paragraph.

XIX. Partial Settlement of Multi-Party Florida Civil Lawsuit.

71. The Parties agree and acknowledge that the Settlement and this Agreement resolve the claims asserted against Mayer Brown in the Litigation and do not resolve the claims the

Receiver asserts against EY in the Litigation (whether pending in arbitration or in the Broward Court). By executing this Agreement, the Receiver does not agree to release EY or any other Person (other than Mayer Brown or its counsel in the Litigation) against whom the Receiver, before the Agreement Date, has provided written notice to Litigation counsel for Mayer Brown that he has filed a claim or cause of action that remains pending in any Forum, and he instead intends to reserve such claims against EY and/or such other Persons. EY and other Persons who are not Mayer Brown Released Parties are not third-party beneficiaries of this Agreement, except EY is a third-party beneficiary of Paragraphs 71-73 and has the right to enforce such terms against the Receiver. The Parties specifically acknowledge that the Receiver's claims remain pending against EY in the Litigation and in the related arbitration(s) against EY, and agree that EY is expressly excluded from the releases given by the Releasers in this Agreement.

72. The Receiver acknowledges that, upon payment of the Settlement Amount consistent with this Agreement, with respect to any claims for which an applicable statute, code, or rule of law affords a right of setoff, EY shall be entitled, in the Litigation or any arbitration that has been or may be brought by the Receiver against EY, to a setoff in the amount of the Settlement Amount or such other amount as provided by applicable statute, code, or rule of law.

73. To facilitate execution of the release agreement between Mayer Brown and EY that is attached hereto as **Exhibit H**, the Receiver acknowledges and agrees that nothing contained in such agreement has any bearing on—and shall not in any way affect or impair or be construed to affect or impair—any rights that EY, absent the agreement set forth in **Exhibit H**, would otherwise have under an applicable statute, code, or rule of law to obtain any of the following in the Litigation or in any arbitration by the Receiver against EY: (i) an allocation or apportionment of fault to Mayer Brown or any other Mayer Brown Released Party, or (ii) a setoff in the amount of the Settlement Amount or such other amount as provided by applicable statute, code, or rule of law.

XX. Miscellaneous.

74. Final and Complete Resolution: The Parties intend this Agreement and the Settlement to be and constitute a final, complete, and worldwide resolution of all matters and disputes between (i) the Receiver Released Parties, on the one hand, and (ii) the Mayer Brown Released Parties on the other hand, and this Agreement, including its exhibits, shall be interpreted to effectuate this purpose.

75. Binding Agreement: As of the Agreement Date, this Agreement shall be binding upon and shall inure to the benefit of the Parties, as well as their respective heirs, executors, administrators, successors, and assigns, although certain provisions do not become effective until the Settlement Effective Date (as set forth in this Agreement). No Party may assign any of its rights or obligations under this Agreement without the express written consent of the other Party. Mayer Brown may not assign any of its rights or obligations under this Agreement that concern FP Offshore without the express written consent of FP Offshore.

76. Disclaimer of Reliance: The Parties represent and acknowledge that in negotiating and entering into the Settlement and this Agreement they have not relied on, and have not been induced by, any representation, warranty, statement, estimate, communication, or information, of any nature whatsoever, whether written or oral, by or on behalf of the other Party or any agent of the other Party, or concerning such other Party, except as expressly set forth in this Agreement. To the contrary, each of the Parties affirmatively represents and acknowledges that the Party is relying solely on the express terms contained within this Agreement. The Parties each have consulted with legal counsel and advisors, have considered the advantages and disadvantages of entering into the Settlement and this Agreement, and have relied solely on their own judgment and the advice of their respective legal counsel in negotiating and entering into the Settlement and this Agreement.

77. Third-Party Beneficiaries: Other than with respect to Paragraphs 71-73 (as to which EY is a third-party beneficiary), this Agreement is not intended to and does not create rights enforceable by any Person other than the Parties (or their respective heirs, executors, administrators, successors, and assigns, as provided in Paragraph 75 of this Agreement); except, however, that if this Agreement provides that a Person is released or should not be sued as a consequence of a covenant not to sue, then such Person may enforce the release or covenant not to sue as it relates to said Person.

78. Negotiation and Drafting: The Parties agree and acknowledge that they each have reviewed and cooperated in the preparation of this Agreement, that no Party should or shall be deemed the drafter of this Agreement or any provision hereof, and that any rule, presumption, or burden of proof that would construe this Agreement, any ambiguity, or any other matter, against the drafter shall not apply and is waived. The Parties are entering into this Agreement freely, after good-faith, arm's-length negotiation, with the advice of counsel, and in the absence of coercion, duress, and undue influence.

79. Construction: The titles and headings in this Agreement are for convenience only, are not part of this Agreement, and shall not bear on the meaning of this Agreement. The words "include," "includes," or "including" shall be deemed to be followed by the words "without limitation." The words "and" and "or" shall be interpreted broadly to have the most inclusive meaning, regardless of any conjunctive or disjunctive tense. Words in the masculine, feminine, or neuter gender shall include any gender. The singular shall include the plural, and vice versa. "Any" shall be understood to include and encompass "all," and "all" shall be understood to include and encompass "any." All dollar amounts in this Agreement are expressed in United States dollars. Any reference herein to any statute, rule, regulation, or agreement, including this Agreement, shall

be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended, or supplemented from time to time.

80. Cooperation: The Parties agree to execute any additional documents reasonably necessary to finalize and carry out the terms of this Agreement. In the event a third party or any Person other than a Party at any time challenges any term of this Agreement or the Settlement, including the Final Settlement Approval & Bar Order or the Judgment Order, the Parties agree to cooperate with each other, including using reasonable efforts to make documents or personnel available as needed to defend any such challenge. Further, the Parties shall reasonably cooperate to defend and enforce the Interim Order, the Preliminary Approval & Scheduling Order, the Final Settlement Approval & Bar Order, Judgment Order, and the orders required under Paragraphs 37, 40, and 45 of this Agreement.

81. Notice: Any notices, documents, or correspondence of any nature required to be sent pursuant to this Agreement shall be transmitted by both e-mail and overnight delivery to the following recipients, and will be deemed transmitted upon receipt by the overnight delivery service:

If to the Receiver:

Daniel S. Newman
NELSON MULLINS RILEY & SCARBOROUGH LLP
One Biscayne Tower — 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 373-9467
Facsimile: (305) 995-6387
Email: dan.newman@nelsonmullins.com

Leo R. Beus
Scot C. Stirling
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: lbeus@beusgilbert.com;
sstirling@beusgilbert.com

Jonathan Etra
NELSON MULLINS RILEY & SCARBOROUGH LLP
One Biscayne Tower — 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 373-9443
Email: jonathan.etra@nelsonmullins.com

Stuart Z. Grossman
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Blvd., Ste. 1150
Coral Gables, FL 33134
Telephone: (305) 442-8666
Facsimile: (305) 285-1668
Email: szg@grossmanroth.com

If to Mayer Brown:

Andrew S. Marovitz, General Counsel
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
Telephone: (312) 701-7116
Facsimile: (312) 706-8651
Email: amarovitz@mayerbrown.com

David J. Bradford
April A. Otterberg
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
Telephone: (312) 222-9350
Facsimile: (312) 527-0484
E-mail: dbradford@jenner.com;
aotterberg@jenner.com

Eugene K. Pettis
Debra P. Klauber
HALICZER, PETTIS & SCHWAMM
One Financial Plaza
100 S.E. 3rd Avenue, 7th Floor
Fort Lauderdale, FL 33394
Telephone: (954) 523-9922
Facsimile: (954) 522-2512
Email: epettis@hpslegal.com;
dklauber@hpslegal.com

Each Party shall provide notice of any change to the service information set forth above to all other Parties by the means set forth in this paragraph.

82. Choice of Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida (or United States federal law, to the extent applicable), including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules (whether of the State of Florida or any other jurisdiction) that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

83. Timing: If any deadline imposed by this Agreement falls on a non-business day, then the deadline is extended until the next business day.

84. Waiver: The waiver by a Party of any breach of this Agreement by the other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

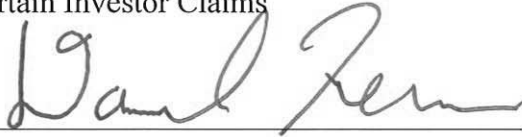
85. Exhibits: The exhibits annexed to this Agreement are incorporated by reference as though fully set forth in this Agreement.

86. Integration and Modification: This Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and communications, whether oral or written, with respect to such subject matter, including drafts of the Agreement and email and other exchanges between counsel for the Parties discussing or summarizing the terms of the Settlement before this Agreement was finalized. Neither this Agreement, nor any provision or term of this Agreement, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by both Parties.

87. Counterparts and Signatures: This Agreement may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten, original signature.

IN WITNESS HEREOF, the Parties have executed this Agreement signifying their agreement to the foregoing terms.

Daniel S. Newman, in his capacity as the Receiver for the Founding Partners Entities and Assignee of Certain Investor Claims



Dated: 10/21/20

Mayer Brown LLP

Dated: _____

By: _____

Andrew S. Marovitz, Partner and
General Counsel

IN WITNESS HEREOF, the Parties have executed this Agreement signifying their agreement to the foregoing terms.

Daniel S. Newman, in his capacity as the Receiver
for the Founding Partners Entities and Assignee of
Certain Investor Claims

Dated: _____

Mayer Brown LLP

Dated: October 20, 2000

By: 

Andrew S. Marovitz, Partner and
General Counsel

EXHIBIT A
to Mayer Brown-Receiver Settlement Agreement

CONSENT TO SETTLEMENT AND RELEASE

This consent and release (this “*Consent*”) is entered into by FP Offshore, Ltd. (“*FP Offshore*”) in connection with that certain settlement agreement entered into by the Receiver (as defined below) and Mayer Brown LLP (“*Mayer Brown*”).

WHEREAS, on December 30, 2010, Daniel S. Newman (the “*Receiver*”), filed a Complaint in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “*Broward Court*”) against Mayer Brown and Ernst & Young LLP (“*EY*”), with the case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “*Litigation*”),

WHEREAS, in the Litigation, the Receiver asserts claims against Mayer Brown in his capacities as (i) the court-appointed receiver for Founding Partners Stable-Value Fund, L.P. (formerly known as Founding Partners Multi-Strategy Fund, L.P.); Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (formerly known as Founding Partners Equity Fund, L.P.), and (ii) the assignee of certain claims of investors in one or more of such funds;

WHEREAS, FP Offshore is the owner of Approved Claim No. 217 in the Receivership Estate and the assignee of certain other rights pursuant to Assignments dated 5 April 2016 from Founding Partners Global Fund Ltd. (In Official Liquidation) and Founding Partners Global Fund Inc. (In Official Liquidation);

WHEREAS, the Receiver and Mayer Brown have agreed to settle all claims, disputes, and issues between them, as set forth in a Settlement Agreement by and between them (the “*Settlement Agreement*,” to which this Consent is attached as Exhibit A);

WHEREAS, Mayer Brown has asked to confirm FP Offshore’s consent and acceptance of the Settlement Agreement and its release of Mayer Brown, as a condition of its entry into the Settlement Agreement; and

WHEREAS, FP Offshore desires to approve and accept the Settlement Agreement and provide Mayer Brown the releases set forth herein.

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FP Offshore agrees as follows:

I. Consent to the Settlement Agreement.



1. Approval and Acceptance. FP Offshore hereby acknowledges, agrees and confirms that, by its execution of this Consent, FP Offshore approves and accepts the Settlement Agreement, and in particular agrees to the releases found within this Consent.

2. Definitions. Capitalized terms used herein and not otherwise defined in this Consent shall have the meaning set forth in the Settlement Agreement.

II. Representations and Releases.

3. Supplement to Settlement Agreement and Final Settlement Approval & Bar Order. FP Offshore acknowledges that it meets the definitions of “Approved Claimant” and “Bar Order Party” under the Settlement Agreement. This Consent is not intended to alter any terms of the Settlement Agreement or Final Settlement Approval & Bar Order that apply to FP Offshore by virtue of its status as an Approved Claimant or Bar Order Party.

4. Legal Capacity. FP Offshore represents that it has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Consent and to fully perform its duties and obligations under this Consent, and that no approvals by any court or regulatory body are required to provide it with such authority. FP Offshore also represents that neither this Consent nor the performance by FP Offshore of any duty or obligation under this Consent will violate any other contract, agreement, obligation, or restriction by which FP Offshore is bound.

5. No Challenge. FP Offshore shall not challenge the approval of the Settlement, the Interim Order, the Final Settlement Approval & Bar Order, or the Judgment Order, nor shall it encourage or assist any Person in challenging the Settlement, the Interim Order, the Final Settlement Approval & Bar Order, or the Judgment Order.

6. Release. As of the Settlement Effective Date, FP Offshore, on behalf of itself and its officers, directors, partners, predecessors, and successors, including in its capacity as the owner of Approved Claim No. 217 in the Receivership Estate and its capacity as the assignee of other rights pursuant to Assignments dated 5 April 2016 from Founding Partners Global Fund Ltd. (In Official Liquidation) or Founding Partners Global Fund Inc. (In Official Liquidation)), and otherwise to the fullest extent of FP Offshore’s authority, including on behalf of any other Person claiming or purporting to hold a claim by or through FP Offshore or its predecessors (collectively, with FP Offshore, the “*FP Offshore Release Parties*”), fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all



7. Covenant Not to Sue. As of the Agreement Date, and except as may be necessary to seek the approvals and/or orders in the SEC Action, the Litigation, and the Subpoena Proceeding that are contemplated by the Settlement Agreement, FP Offshore (on behalf of itself and the other FP Offshore Release Parties) covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of the Mayer Brown Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the foregoing, however, FP Offshore retains the right to sue to enforce or effectuate this Consent or to assert an alleged breach of this Consent.

8. Partial Settlement of Multi-Party Florida Civil Lawsuit. FP Offshore acknowledges that the Settlement and the Settlement Agreement resolve the claims asserted against Mayer Brown in the Litigation and do not resolve the claims asserted against EY in the Litigation (whether pending in arbitration or in the Broward Court). By executing this Consent, FP Offshore does not agree to release EY or any other Person (other than Mayer Brown or its counsel in the Litigation) against whom the Receiver, before the Agreement Date, has provided written notice to Litigation counsel for Mayer Brown that he has filed a claim or cause of action that remains pending in any Forum, and FP Offshore instead intends to reserve such claims against EY and/or such other Persons. EY and other Persons who are not Mayer Brown Released Parties are not third-party beneficiaries of this Agreement. FP Offshore specifically acknowledges that the Receiver's claims remain pending against EY in the Litigation and in the related arbitration(s) against EY, and agrees that EY is expressly excluded from the releases that FP Offshore is providing in this Consent.

9. No Release of Obligations Under Settlement Agreement. Notwithstanding anything to the contrary in this Consent, the releases and covenants contained in this Consent do not release the obligations of Mayer Brown under the Settlement Agreement.

10. No Additional Claims. FP Offshore represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against Mayer Brown (or the Mayer Brown Released Parties) that is not being released pursuant to the terms of this



11. No Assignment, Encumbrance, or Transfer. FP Offshore represents that it is the beneficial owner of any Settled Claims that it is releasing under this Consent and the owner of Approved Claim No. 217, that it is the assignee of certain other rights pursuant to Assignments dated 5 April 2016 from Founding Partners Global Fund Ltd. (In Official Liquidation) and Founding Partners Global Fund Inc. (In Official Liquidation), and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any part of the Approved Claim No. 217, nor any of the rights it acquired pursuant to the Assignments dated 5 April 2016, nor any interest in any of the Settled Claims that it is releasing under this Consent.

12. Final and Complete Resolution. FP Offshore intends this Consent to be and constitute a final, complete, and worldwide resolution of all matters and disputes between it and the Mayer Brown Released Parties, and this Consent, along with the Settlement Agreement, shall be interpreted to effectuate this purpose.

13. Distribution. As an additional confirmation of certain of the releases that the Mayer Brown Released Parties will receive under this Consent, and not intended to alter the releases provided herein or in the Final Settlement Approval & Bar Order, FP Offshore must include the following statement, without alteration, on the request for confirmation of wire instructions to its investors, above where the endorser will sign:

BY SIGNING THIS DOCUMENT AND RECEIVING THE SETTLEMENT PROCEEDS, I CONFIRM THAT I HAVE RECEIVED A COPY OF THE SETTLEMENT AGREEMENT BETWEEN THE FOUNDING PARTNERS RECEIVER AND MAYER BROWN LLP, THAT THE ABOVE WIRE INSTRUCTIONS ARE ACCURATE, AND THAT I RELEASE ALL SETTLED CLAIMS, KNOWN OR NOT, ACCRUED OR NOT, AGAINST THE MAYER BROWN RELEASED PARTIES AND THE DIRECTORS OF FP OFFSHORE LIMITED, ARISING FROM OR RELATING TO FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY, THE FOUNDING PARTNERS FUNDS, ANY OF THEIR PERSONNEL, OR ANY INVESTMENT IN OR WITH SUCH ENTITIES, AS SET FORTH MORE FULLY IN THE MAYER BROWN SETTLEMENT AGREEMENT.

In the event that an investor fails to endorse the request for



confirmation of the instructions as set out in this Paragraph, and the Grand Court of the Cayman Islands thereafter orders FP Offshore to pay to that investor such sums as it finds are due to that investor pursuant to Cayman Islands law, Mayer Brown shall not have a claim against FP Offshore or its directors by virtue of complying with such order and paying such sums, so long as FP Offshore has complied with all of the following:

(a) FP Offshore has provided notice to Mayer Brown of the initiation of such a proceeding as soon as practicable after FP Offshore becomes aware of such proceeding, and in all events prior to entry of an order by the Grand Court of the Cayman Islands regarding the distribution of the funds at issue;

(b) FP Offshore has not objected in the event that Mayer Brown decides to seek to intervene in such proceeding;

(c) FP Offshore has informed the Grand Court of the Cayman Islands in any such proceeding that the funds at issue were received by FP Offshore pursuant to a U.S. court-approved settlement with Mayer Brown and that Mayer Brown has stated that it would not have paid the Settlement Amount absent assurances of "total peace" and complete releases of the Mayer Brown Released Parties, of which the release language set forth in this Paragraph 13 is an important part; and

(d) FP Offshore has provided Mayer Brown with the court record(s) in which FP Offshore provided the notification required by (c) and the order(s) from the Grand Court of the Cayman Islands providing for the distribution of the funds.

14. No Assignment. FP Offshore may not assign any of its rights or obligations under this Consent without the express written consent of Mayer Brown.

15. Support for Settlement. FP Offshore represents and warrants that, prior to executing this Consent, FP Offshore representatives consulted with certain of FP Offshore's investors regarding their views on the proposed settlement with Mayer Brown. FP Offshore represents and warrants that no investor in FP Offshore has informed FP Offshore's directors, prior to FP Offshore executing this Consent, that such investor objects to providing the release set forth in Paragraph 13 prior to receiving his, her, or its share of the portion of the Settlement Amount that the Receiver will distribute to FP Offshore pursuant to the Distribution Plan.

16. Disclaimer of Reliance. FP Offshore represents and acknowledges that in entering into this Consent, it has not relied



on, and has not been induced by, any representation, warranty, statement, estimate, communication, or information, of any nature whatsoever, whether written or oral, by or on behalf of Mayer Brown or any agent thereof, or concerning Mayer Brown, except as expressly set forth in this Consent or the Settlement Agreement. To the contrary, FP Offshore affirmatively represents and acknowledges that it is relying solely on the express terms contained within this Consent and the Settlement Agreement, that it has consulted with legal counsel and advisors, that it has considered the advantages and disadvantages of entering into this Consent, and that it has relied solely on its own judgment and the advice of its legal counsel in negotiating and entering into this Consent. FP Offshore is entering into this Consent freely, with the advice of counsel, and in the absence of coercion, duress, and undue influence.

17. Termination. If the Settlement Agreement terminates pursuant to Section XI of the Settlement Agreement, then this Consent shall be deemed to be null and void and of no further effect whatsoever (except the provisions of this Paragraph 17 shall survive), shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and shall not be the subject of or basis for any claims by or against FP Offshore or Mayer Brown. If this Consent terminates pursuant to this Paragraph 17, then FP Offshore shall be returned to the position it occupied immediately before executing this Consent. Except as expressly set forth in this Paragraph 17, this Consent may not be terminated.

III. Miscellany.

18. Governing Law and Venue. The validity, interpretation and performance of this Consent shall be governed by and construed and enforced in accordance with the laws of the State of Florida, including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules (whether of the State of Florida or any other jurisdiction) that would result in the application of the substantive or procedural rules or law of any other jurisdiction. FP Offshore agrees that any action or proceeding arising out of or relating to this Consent shall be brought only in Broward Court, and that no costs or attorneys' fees may be awarded to FP Offshore in connection with such a proceeding.

19. Integration and Modification. This Consent, read together with the Settlement Agreement, sets forth the entire understanding and agreement of FP Offshore with respect to the subject matter of this Consent and supersedes all prior agreements, understandings, negotiations, and communications, whether oral or written, with respect to such subject matter,



including drafts of the Consent or Settlement Agreement.

Neither this Consent, nor any of its provisions or terms, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by FP Offshore and Mayer Brown.

20. Signatures. A signature to this Consent that is delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten, original signature.

IN WITNESS WHEREOF, FP Offshore has executed this Consent signifying its agreement to the foregoing terms.

FP Offshore, Ltd.

Dated: 23 OCTOBER 2020

By: _____

Ian Stokoe
Director

Page 7 of 7

**EXHIBIT A TO MAYER BROWN
SETTLEMENT AGREEMENT**

EXHIBIT B
to Mayer Brown-Receiver Settlement Agreement

RELEASE

THIS RELEASE (the “Release”) is made and entered into by and between, on the one hand, William L. Gunlicks (“Gunlicks”) and William J. Delaney, on behalf of himself and Delaney Law, P.C. (together, “Delaney”), and on the other hand, Mayer Brown LLP (“Mayer Brown”) (each a “Release Party” and, collectively, the “Release Parties”).

WHEREAS, certain disputes have arisen between Mayer Brown and Gunlicks, including but not limited to disputes with respect to any rights of Gunlicks under 735 ILCS 5/8-2005 (the “Gunlicks File Claim”), Mayer Brown’s payment of costs related to the production of Gunlicks’ documents pursuant to Mayer Brown’s subpoena, and other disputes asserted in or related to the proceeding captioned *Newman v. Mayer Brown LLP*, Case No. 2017 L 009824 (Cook Cty. Cir. Ct., Ill.) (the “Subpoena Proceeding”);

WHEREAS, Delaney has served as counsel to Gunlicks in the Subpoena Proceeding and in connection with Gunlicks’ deposition, incurring costs and attorneys’ fees on Gunlicks’ behalf; and

WHEREAS, Mayer Brown on the one hand, and Gunlicks and Delaney on the other, desire to fully, finally, and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them.

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Gunlicks, Delaney, and Mayer Brown agree as follows:

1. “Mayer Brown Released Parties” means Mayer Brown, Mayer Brown LLP, Mayer Brown (a Hong Kong partnership), Mayer Brown (Beijing) Intellectual Property Agency Co. Ltd., Mayer Brown (Singapore) Pte. Limited (No.201114070Z), Mayer Brown (Thailand) Limited, Mayer Brown (Vietnam) LLC, Mayer Brown Beijing Representative Office, HK, Mayer Brown Consulting (Singapore) Pte. Ltd. (No.201407965N), Mayer Brown Europe-Brussels LLP, Mayer Brown Gaikokuho Jimu Bengoshi Jimusho (GJBJ), Mayer Brown International LLP, Mayer Brown Mexico S.C. (a State of Durango Sociedad Civil), Mayer Brown Shanghai Representative Office (Hong Kong), Mayer Brown, a French Corporation (SELAS), Tauil & Chequer Advogados — Brasília, Tauil e Chequer Advogados — Rio de Janeiro, Tauil e Chequer Advogados (Vitoria), and Tauil e Chequer Sociedade de Advogados (São Paulo), as well as all of their respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Mayer Brown Released

Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the claims being released under this Release. For the avoidance of doubt, “Mayer Brown Released Parties” does not include Ernst & Young LLP (“EY”) or any other person or entity, besides Mayer Brown, against whom the Founding Partners Receiver (Daniel S. Newman), as of the date that this Release is fully executed by all Release Parties (the “Execution Date”), has filed a claim or cause of action that remains pending in any forum. It is the intent of the Release Parties that nothing in this Release have the effect of releasing the claims the Receiver has asserted and that remain pending against EY in Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, or in an arbitral forum.

2. Payment to Delaney: As compensation to Delaney for attorneys’ fees and costs incurred in connection with representing Gunlicks in the Subpoena Proceeding and in Gunlicks’ deposition, Mayer Brown shall make a payment to Delaney in the amount of \$375,000.00 (three hundred seventy-five thousand United States Dollars), in two tranches: (a) a payment in the amount of \$225,000.00 (two hundred and twenty-five thousand United States Dollars), which was made by Mayer Brown to Delaney on September 1, 2020; and (b) a payment of \$150,000.00 (one hundred and fifty thousand United States Dollars) to be made by Mayer Brown to Delaney within five (5) business days of the Settlement Effective Date (as that term is defined in the settlement agreement between the Founding Partners Receiver (Daniel S. Newman) and Mayer Brown). By his signature to this Release, Delaney acknowledges receipt of the first tranche of the payment, and that he is responsible for all taxes, fees, and expenses that may be due with respect to such first tranche. No later than the Settlement Effective Date, Delaney shall provide Mayer Brown’s counsel with wire instructions for the second tranche of the payment. Delaney shall provide Mayer Brown’s counsel with written confirmation of receipt of the second tranche of the payment no later than one (1) business day after such second tranche is received. Upon receipt of the second tranche of the payment, Delaney shall be responsible for all taxes, fees, and expenses that may be due with respect to such second tranche. In the event the Settlement Effective Date does not occur because the settlement agreement between the Founding Partners Receiver and Mayer Brown has terminated pursuant to the provisions of that agreement, then Mayer Brown shall have no obligation whatsoever to make the second tranche of the payment to Delaney, but this Release shall remain fully in effect. This Release does not terminate if the settlement agreement between the Founding Partners Receiver and Mayer Brown terminates by its terms. In no event shall Delaney be entitled to any monetary compensation from Mayer Brown (or any of the other Mayer Brown Released Parties), in addition to or instead of the payments set forth in this Paragraph 2. Gunlicks and Delaney acknowledge and understand that Mayer Brown is not making any monetary payment to Gunlicks under this Release, including but not limited to this Paragraph 2.

3. Release of Mayer Brown:

a. Effective as of the Execution Date, Gunlicks, on behalf of himself and his heirs, beneficiaries, successors, and assigns, fully, finally, and forever releases, relinquishes, and discharges, with prejudice, the Mayer Brown Released Parties of and from any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, discoverable, or accrued, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise (each a "Released Claim" and collectively "Released Claims," which terms also include Unknown Claims, defined below), that Gunlicks ever had, now has, or hereafter can, shall, or may have, whether directly, representatively, derivatively, or in any other capacity, against any of the Mayer Brown Released Parties based on any facts or circumstances existing or occurring on or at any time prior to the Execution Date or that may be hereafter claimed to relate to or arise out of any facts or circumstances existing or occurring on or at any time before the Execution Date; except that nothing in this Paragraph 3(a) releases any claim arising from this Release or its representations, or concerning the enforcement of this Release.

b. Effective as of the Execution Date, Delaney, on behalf of both William J. Delaney and Delaney Law, P.C., as well as their respective heirs, beneficiaries, successors, and assigns, fully, finally, and forever releases, relinquishes, and discharges, with prejudice, the Mayer Brown Released Parties of and from any and all Released Claims that Delaney ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, against any of the Mayer Brown Released Parties based on any facts or circumstances existing or occurring on or at any time prior to the Execution Date or that may be hereafter claimed to relate to or arise out of any facts or circumstances existing or occurring on or at any time before the Execution Date; except that nothing in this Paragraph 3(b) releases any claim arising from this Release or its representations, or concerning the enforcement of this Release.

4. Release of Gunlicks and Delaney: Effective as of the Execution Date, Mayer Brown fully, finally, and forever releases, relinquishes, and discharges, with prejudice, Gunlicks and Delaney, and each of their respective, heirs, beneficiaries, successors, and assigns, of and from any and all Released Claims that Mayer Brown ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, against Gunlicks or Delaney based on any facts or circumstances existing or occurring on or at any time prior to the Execution Date or that may be hereafter claimed to relate to or arise out of any facts or circumstances existing or occurring on or at any time before the Execution Date; except that nothing in this Paragraph 4 releases any claim arising from this Release or its representations, or concerning the enforcement of this

Release, or releases Mayer Brown's ability to seek or obtain a deposition of Gunlicks in the event the litigation currently pending in Broward County, Florida, resumes between the Founding Partners Receiver (Daniel S. Newman) and Mayer Brown.

5. Unknown Claims: The releases provided in Paragraphs 3 and 4 herein specifically include, without limitation, all claims (or facts relating thereto) that each Release Party does not know or suspect to exist in his or its favor at the time of this Release, which, if known by such Release Party might have affected his or its decision with respect to this Release ("Unknown Claims"). Each Release Party expressly waives, releases, and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Code § 1542 provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." Each Release Party acknowledges that he or it may hereafter discover facts different from, or in addition to, those which such Release Party now knows or believes to be true with respect to the releases each is providing herein, but nonetheless each agrees that this Release will remain binding and effective in all respects notwithstanding such discovery. Unknown Claims include contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. These provisions and the inclusion of Unknown Claims within this Release and within the definition of "Released Claims" were separately bargained for and are an essential element of this Release. Each Release Party understands and acknowledges the significance and the consequences of this waiver and confirms that he or it either has discussed or has been given an opportunity to discuss such matters with counsel of his or its choice.

6. No Release Of Ernst & Young Or Others: By executing this Release, Gunlicks and Delaney have not agreed to release any person or entity other than the Mayer Brown Released Parties, specifically including EY, or any other potential tortfeasors who are not Mayer Brown Released Parties, from any claim whatsoever. EY and other potential tortfeasors who are not Mayer Brown Released Parties are not third-party beneficiaries of this Release. The claims that remain pending against EY in the case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Litigation") and in the related arbitration against EY, are expressly excluded from this Release.

7. Mutual Covenants Not to Sue: Effective as of the Execution Date, Gunlicks and Delaney covenant not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against the Mayer Brown Released

Parties, and Mayer Brown covenants not to do the same against Gunlicks or Delaney, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding, whether in a court or any other forum, and regardless of whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, regarding any matter released pursuant to this Release. However, the Release Parties each retain the right to sue to effectuate or enforce this Release and to take the actions required by Paragraph 8 herein, and Mayer Brown retains the right to seek Gunlicks' deposition in the event the litigation currently pending in Broward County, Florida, resumes between the Founding Partners Receiver (Daniel S. Newman) and Mayer Brown.

8. Dismissal of Pending Matters: Within 10 days of the execution by the Founding Partners Receiver (Daniel S. Newman) and Mayer Brown of a settlement agreement between the two of them, Gunlicks, through Delaney as his counsel, shall file a Stipulation of Dismissal in the Subpoena Proceeding, which stipulation shall state the Release Parties' agreement that (1) the Gunlicks File Claim has been resolved and that it should be dismissed with prejudice; (2) all pending motions are to be withdrawn as moot; (3) the Subpoena Proceeding is to be closed but may be reopened by Mayer Brown or the Receiver, for the sole purpose of facilitating the seeking of Gunlicks' deposition, in the event litigation between them currently pending in Broward County, Florida, resumes; and (4) that each party is to bear its own attorneys' fees, costs, and expenses. Mayer Brown shall draft such Stipulation of Dismissal for review by Delaney and the Receiver. Gunlicks (as well as Delaney as his counsel) and Mayer Brown, with the assistance of the Receiver as may be appropriate, shall cooperate in obtaining an order from the Cook County Court that memorializes and effectuates the terms of the Stipulation of Dismissal in an order that closes the Subpoena Proceeding on the terms set forth in this Paragraph 8. Upon the Execution Date, and excluding statements Gunlicks or Mayer Brown (and their respective counsel, which, as to Gunlicks, includes Delaney) may make in court, Gunlicks and Mayer Brown (and their respective counsel, which, as to Gunlicks, includes Delaney) shall not make, disseminate, or publish any statement, including a statement to the press, that would denigrate or embarrass the other, or that is otherwise negative or derogatory toward the other. Upon the Execution Date, Gunlicks, Delaney, and Mayer Brown (and its counsel) agree that they will maintain as confidential and not disclose to third persons (except Mayer Brown may make such disclosures to its insurers and their counsel) the discussions and information shared in order to reach agreement on this Release, including discussions with the Receiver and/or his counsel.

9. Representations:

a. Gunlicks and Delaney each represent and warrant, respectively, (i) that he is the owner of, and has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised, any of the Released Claims that he is releasing under this Release; and (ii) that he does not know of, and has not filed or asserted, any claim or potential claim that he owns,

possesses, or has authority to assert against any of the Mayer Brown Released Parties that is not being released under this Release. Mayer Brown represents and warrants (i) that it is the owner of, and has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised, any of the Released Claims that it is releasing under this Release; and (ii) that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against Gunlicks or Delaney that is not being released under this Release.

b. Each person executing this Release or any related documents on behalf of an entity represents and warrants that he has the full authority to execute the documents on behalf of the entity each represents and that each has the authority to take appropriate action required or permitted to be taken pursuant to this Release to effectuate its terms.

10. Integration: This Release sets forth the entire understanding and agreement of the Release Parties with respect to the subject matter of this Release. Upon the Execution Date, all prior agreements or understandings between and among Gunlicks and Delaney, on the one hand, and Mayer Brown, on the other, that concern the subject matter of this Release shall be terminated and deemed null and void and of no further effect whatsoever, and this Release shall supersede and replace in all respects any such prior agreements or understandings.

11. Modification: Neither this Release, nor any provision or term of this Release, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by all Release Parties.

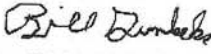
12. Counterparts and Signatures: This Release may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten original signature.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS HEREOF, Gunlicks, Delaney, and Mayer Brown have executed this Release signifying their agreement to the foregoing terms.

William L. Gunlicks

Dated: 9/10/2020

DocuSigned by:

0A41C53B32BC439...

William J. Delaney, individually and on behalf of Delaney Law, P.C.

Dated: 9/10/2020

DocuSigned by:

B814FBFE28C4489...

William Delaney

Mayer Brown LLP

Dated: 9.14.2020

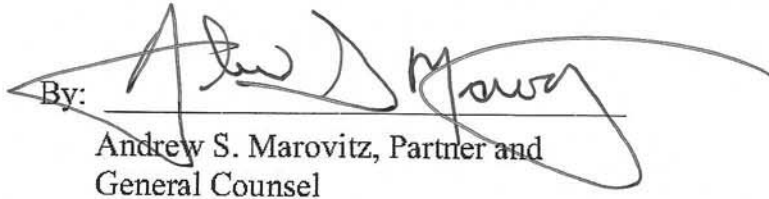
By: 
Andrew S. Marovitz, Partner and General Counsel

EXHIBIT C

to Mayer Brown-Receiver Settlement Agreement

**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, L.P.; FOUNDING PARTNERS)
STABLE-VALUE FUND II, L.P.;)
FOUNDING PARTNERS GLOBAL FUND,)
LTD.; and FOUNDING PARTNERS)
HYBRID-VALUE FUND, L.P.,)

Plaintiff,)

v.)

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

Defendants.)

No. 10-49061

Chief Judge Jack Tuter

**[PROPOSED] ORDER WITH PRELIMINARY FINDINGS CONCERNING
PROPOSED SETTLEMENT BETWEEN THE RECEIVER AND MAYER BROWN LLP**

THIS CAUSE, having come to the Court upon the Receiver’s Motion for Preliminary Findings Concerning Proposed Settlement Between the Receiver and Mayer Brown LLP (the “Motion”), the Court having considered the Motion and reviewed the proposed Settlement Agreement between the Receiver and Mayer Brown (the “Parties”), the Court hereby **GRANTS** the Motion. It is hereby **ORDERED AND ADJUDGED** as follows:

1. All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement, which is attached as Exhibit 1 to the Motion.

2. The Court has reviewed the Motion and the materials submitted with it and understands that the Receiver has initiated, or intends to initiate, a process to obtain the approval of the proposed Settlement by Judge John E. Steele of the U.S. District Court for the Middle

District of Florida (the “Federal Court”), which is the court that appointed the Receiver in 2009. The Court understands that the Receiver’s motion in the Federal Court includes, or will include, a request that the Federal Court approve the proposed Settlement and enter the proposed Final Settlement Approval & Bar Order.

3. In the Motion, the Parties ask this Court to make certain preliminary findings concerning the proposed Settlement. Specifically, the Motion recognizes that this Court is the trial court presiding over this litigation and therefore that this Court has information and background concerning the progression of this case. The Parties have advised the Court that Mayer Brown’s co-defendant in this matter, Ernst & Young LLP, does not object to the proposed Settlement.

4. The Receiver represents that, under the Federal Court order that appointed him, he may not seek this Court’s full and final approval of the Settlement unless and until the Federal Court has approved the proposed Settlement. As a result, the findings set forth in this Order are preliminary only. This Order is not a partial judgment in this matter.

5. With these considerations in mind, the Court issues the following preliminary findings with respect to the proposed Settlement:

(a) This litigation has been hard-fought and active between the Parties, and the Court has been asked to resolve numerous disagreements and disputes between the Parties. Among other issues, the Parties litigated many discovery motions and six separate motions for partial summary judgment. Four of those summary judgment motions were decided before the Court stayed this litigation on July 16, 2020. Discovery to date in this case has been quite extensive; the Court understands that by the time the stay was entered, the Parties had taken dozens of depositions in this case, including depositions of many non-parties, and that the Parties and many non-parties had produced nearly two million documents.

(b) The Court is of the view that both the Receiver and Mayer Brown have been represented in this matter by sophisticated, competent, and experienced counsel.

(c) The Court has been informed that the Receiver and Mayer Brown engaged in two formal mediations during the pendency of this case, in an effort to determine if they could resolve this matter. The first occurred in February 2014 with Jonathan B. Marks of Marks ADR in Washington, D.C., and the second occurred in January 2019 with Lawrence Watson of Upchurch, Watson, White & Max in Orlando, Florida. The mediation with Mr. Watson occurred pursuant to this Court's June 7, 2017 scheduling order requiring a mediation process, which order was amended on August 13, 2018 and November 26, 2018 to accommodate extensions of the mediation deadline.

(d) Neither mediation resulted in a settlement. Indeed, the Receiver and Mayer Brown returned to active and vigorous litigation of this matter for more than a year and a half after the conclusion of the 2019 mediation. The Court has been informed that discussions among the Parties and their counsel in 2020 further advanced the Parties' settlement negotiations and resulted in a settlement in principle just before they sought to stay this case on July 15, 2020.

(e) Given the Court's knowledge of this case and its review of the Settlement Agreement, the Court preliminarily finds that the proposed Settlement was reached in good faith and that it does not reflect any collusion or wrongful conduct between the Parties. The Court makes this preliminary finding based on the terms of the proposed Settlement (including the very substantial Settlement Amount), as well as the Court's own observation of the vigorous litigation activities between the Parties.

(f) The Court also preliminarily finds that the proposed Settlement is fair, adequate, and reasonable for the claims the Receiver asserted against Mayer Brown. Among other

things, the proposed Settlement Amount is very substantial; both Parties faced risk with continued litigation in this Court; and the costs of further litigation through trial were likely to be quite significant in this complex case.

6. The Court understands that the Parties do not intend anything in the Motion or in this Order (including its preliminary findings) to be construed as an admission or concession of (a) any violation of any statute or law by any Party; (b) any fault, liability, or wrongdoing by any Party; or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in this action, or any other proceeding.

7. This Order shall not alter or otherwise affect the stay of proceedings entered by the Court in its July 16, 2020 Order.

8. The Court understands that the Parties will return to this Court for further relief, including entry of the proposed Judgment Order, after completing the process required by the Federal Court to approve the proposed Settlement and to enter the Final Settlement Approval & Bar Order (and assuming the Federal Court grants such approval and enters such order). To the extent this Court determines at that time that it is appropriate to enter the proposed Judgment Order, such Judgment Order shall supersede this Order, including its preliminary findings.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this _____ day of _____, 2020.

HONORABLE JACK TUTER
Chief Judge

Copies furnished:
All counsel of record

EXHIBIT D

to Mayer Brown-Receiver Settlement Agreement

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-JES-CM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

ORDER APPROVING SETTLEMENT AND ENTERING FINAL BAR ORDER

Before the Court is the Motion to Approve Proposed Settlement with Mayer Brown LLP, to Approve the Proposed Notice of Settlement with Mayer Brown LLP, and to Enter the Final Settlement Approval & Bar Order (the “Motion”), filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the court-appointed receiver for the Founding Partners Entities¹, and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors.”

¹ The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (formerly known as Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (formerly known as Founding Partners Equity Fund, L.P.).

The Motion concerns a proposed settlement (the “Settlement”) among and between the Receiver and Mayer Brown LLP (“Mayer Brown”), one of the defendants in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Litigation”). The Settlement Agreement at issue (the “Agreement”) is attached as Exhibit 1 to the Motion [ECF No. ____]. All capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

Following notice and a hearing, having considered the case filings related to the Settlement, and having heard the arguments of counsel, the Court hereby **GRANTS** the Motion, as set forth below. For the reasons set forth herein, the Court finds that the terms of the Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of the bar order sought in the Motion—and now provided herein—is both essential to the Settlement between the Receiver and Mayer Brown (the “Parties”) and fair and equitable under the circumstances.

I. BACKGROUND, FINDINGS, & CONCLUSIONS OF LAW.

[To be drafted, and to include addressing any objections that may be filed.]

II. RELEASES, BARS, INJUNCTIONS, AND RESTRAINTS.

A. Release of Mayer Brown Released Parties.

Consistent with Paragraph 55 of the Agreement, and as of the Settlement Effective Date, Mayer Brown and the rest of the Mayer Brown Released Parties² shall be completely released,

² “Mayer Brown Released Parties” means Mayer Brown, Mayer Brown LLP, Mayer Brown (a Hong Kong partnership), Mayer Brown (Beijing) Intellectual Property Agency Co. Ltd., Mayer Brown (Singapore) Pte. Limited (No.201114070Z), Mayer Brown (Thailand) Limited, Mayer Brown (Vietnam) LLC, Mayer Brown Beijing Representative Office, HK, Mayer Brown Consulting (Singapore) Pte. Ltd. (No.201407965N), Mayer Brown Europe-Brussels LLP, Mayer Brown Gaikokuho Jimu Bengoshi Jimusho (GJBJ), Mayer Brown International LLP, Mayer Brown Mexico S.C. (a State of Durango Sociedad Civil), Mayer Brown Shanghai Representative Office (Hong Kong),

acquitted, and forever discharged by all Bar Order Parties³ from the following (“Settled Claims”): any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that such Bar Order Party ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with:

- (i) any of the conduct complained of in the SEC Action or the Litigation;
- (ii) any of the Founding Partners Entities;
- (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities;

Mayer Brown, a French Corporation (SELAS), Tauil & Chequer Advogados — Brasília, Tauil e Chequer Advogados — Rio de Janeiro, Tauil e Chequer Advogados (Vitoria), and Tauil e Chequer Sociedade de Advogados (São Paulo), as well as all of their respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Mayer Brown Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims. For the avoidance of doubt, “Mayer Brown Released Parties” does not include Ernst & Young LLP or any other Person, besides Mayer Brown or its counsel in the Litigation, against whom the Receiver, before the Agreement Date, has provided written notice to Litigation counsel for Mayer Brown that he has filed a claim or cause of action that remains pending in any Forum.

³ “Bar Order Parties” means (1) the Receiver; (2) the Receivership Estate; (3) the Founding Partners Entities; (4) the Assignors; (5) the Approved Claimants; (6) the Unapproved Claimants; (7) Ernst & Young LLP; (8) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (9) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of the Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more Founding Partners Funds, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

- (iv) Mayer Brown's relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (v) Mayer Brown's provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (vi) Mayer Brown's relationship with, services for, or conduct with respect to MasterFactor, Inc. and/or any of its personnel, or Mayer Brown's provision of services to or for the benefit of or on behalf of MasterFactor, Inc.;
- (vii) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (viii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees;
- (ix) any request or demand pursuant to 735 ILCS 5/8-2005 or similar statutes, rules, or authorities related to or arising from Mayer Brown's relationship with, services for, or conduct with respect to MasterFactor, Inc., any one or more of the Founding Partners Entities, and/or any of the personnel of any of the Founding Partners Entities, including but not limited to Gunlicks;
- (x) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Mayer Brown, Mayer Brown's counsel, or any other Person; or
- (xi) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009.

"Settled Claims" also specifically includes, without limitation, all claims (or facts relating thereto) against Mayer Brown or the Mayer Brown Released Parties that each Bar Order Party does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected his, her, or its decisions with respect to the Agreement and the Settlement. "Settled Claims" also includes contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or

additional facts. Each Bar Order Party releases and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute.⁴

B. Release of Receiver Released Parties.

Pursuant to the provisions of Paragraph 56 of the Agreement, and as of the Settlement Effective Date, the Receiver Released Parties⁵ shall be completely released, acquitted, and forever discharged by Mayer Brown from all Settled Claims.

C. Bars, Restraints, and Injunctions.

The Court hereby permanently bars, restrains, and enjoins all Bar Order Parties (and all Persons acting in concert with such Bar Order Party or claiming by, through, or under such Bar Order Party), all and individually, from directly, indirectly, or through a third party, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against Mayer Brown or any of the Mayer Brown Released Parties, (i) the Litigation (except as is necessary to bring the Litigation to final conclusion with respect to Mayer Brown pursuant to the terms of the Agreement), or (ii) any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of

⁴ California Code § 1542 provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

⁵ “Receiver Released Parties” means the Receiver and the Assignors, and each of their counsel. “Receiver Released Parties” also includes each of the foregoing persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Receiver Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Founding Partners Entities or William L. Gunlicks; this case or its subject matter; the Litigation or its subject matter; or any Settled Claim.

The foregoing specifically includes (but is not limited to) any claim against any Mayer Brown Released Party, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Bar Order Party or the claim asserted by such Bar Order Party arises out of, relates to, or is based in whole or in part upon (a) such Bar Order Party's actual or alleged liability to the Receiver, the Receivership Estate, or the Founding Partners Entities, or (b) money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to the Receiver, the Receivership Estate, or the Founding Partners Entities, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. There is no indication of collusion, bad faith, or wrongful conduct between the Parties in connection with reaching agreement on the Settlement and the Settlement Amount, and the Court affirmatively finds that there has been none. As such, the Court expressly finds that the Agreement was entered into in good faith.

D. Exclusions.

The foregoing releases, bars, injunctions, and restraints do not (i) release the rights and obligations of the Receiver and Mayer Brown under the Settlement, the Agreement, or this Final Settlement Approval & Bar Order; (ii) bar the Receiver or Mayer Brown from enforcing, effectuating, or suing for alleged breaches of the Settlement or the Agreement; (iii) bar Mayer Brown, FP Offshore, Ltd., Gunlicks, Gunlicks' counsel (William J. Delaney, individually and on behalf of Delaney Law, P.C.), or Ernst & Young LLP from enforcing, effectuating, or suing for alleged breaches of the release agreements applicable to them and attached as Exhibits A, B, and H to the Agreement; (iv) bar any Person released under the Agreement, the release agreements

attached as Exhibits A, B, and H to the Agreement, or this Final Settlement Approval & Bar Order from enforcing, effectuating, or suing to enforce such release; or (v) affect the evidence that the Receiver or Ernst & Young LLP may offer in connection with the Receiver's claims against Ernst & Young LLP asserted in the Litigation or in related arbitration proceedings. Nothing in Part II.C of this Final Settlement Approval & Bar Order is intended to bar claims against Persons other than Mayer Brown and the Mayer Brown Released Parties, or to create rights in such other Persons against any Bar Order Parties.

Nothing in this Final Settlement Approval & Bar Order, or the release agreement between Mayer Brown and Ernst & Young LLP that is attached as Exhibit H to the Agreement, shall impair or affect, or be construed to impair or affect in any way whatsoever, any right of any Bar Order Party or any other Person to: (a) claim, based upon the Settlement or payment of the Settlement Amount, a credit or offset against any judgment amount, if and to the extent provided by any applicable statute, code, or rule of law; or (b) designate a "responsible party" under Fla. Stat. § 768.81(3) and/or *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993) and similar statutes or rules in other jurisdictions; or (c) seek discovery from Mayer Brown or the Mayer Brown Released Parties under applicable rules in litigation; provided, for the avoidance of doubt, that neither shall anything in this paragraph be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification, or otherwise) upon Mayer Brown or any other Mayer Brown Released Party. However, nothing in this Final Settlement Approval & Bar Order shall alter the various agreements on discovery matters that are reflected in Paragraph 61 of the Agreement; the release between Gunlicks, Delaney, and Mayer Brown that is attached as Exhibit B to the Agreement; or the release between Mayer Brown and Ernst & Young LLP that is attached as Exhibit H to the Agreement.

Notwithstanding anything herein or in the Agreement to the contrary, this Final Settlement Approval & Bar Order shall not apply to any federal, state, or local governmental agency, including but not limited to the Securities and Exchange Commission.

III. OTHER MATTERS RELATING TO THE APPROVED SETTLEMENT.

A. No Responsibility or Liability for Mayer Brown Released Parties for Certain Matters.

Mayer Brown and the rest of the Mayer Brown Released Parties have no responsibility, obligation, or liability whatsoever for the following:

- (i) any attorneys' fees, costs, or expenses that may be owed to or approved for payment to the Receiver's counsel;
- (ii) the content of the Notice, the distribution of the Notice, or the Notice process;
- (iii) the creation, terms, interpretation, or implementation of the Distribution Plan(s);
- (iv) the administration of the Settlement;
- (v) the management, investment, or distribution of the Settlement Amount (or any portion thereof) or any other funds paid or received in connection with the Settlement, once the Settlement Amount (or any portion thereof) is paid to the Receiver pursuant to Section IV of the Agreement;
- (vi) the payment or withholding of Taxes that may be due or owing by the Receiver or the Receivership Estate once the Receiver receives the Settlement Amount or any portion thereof, or due and owing by any recipient of funds from the Settlement Amount;
- (vii) the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid to or received by Approved Claimants in connection with the Settlement, the Agreement, or the Distribution Plan(s); or
- (viii) any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred by the Receiver or any other Person, other than Mayer Brown or the Mayer Brown Released Parties, in connection with any of the foregoing matters.

No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Agreement, or this Final Settlement Approval & Bar Order, unless such appeal, challenge, decision, or other matter means any of the

Conditions has failed to come to pass such that the Settlement Effective Date has not arisen pursuant to Paragraph 23 of the Agreement.

B. No Admission of Fault.

Nothing in this Final Settlement Approval & Bar Order or the Agreement (including its exhibits), and no aspect of the Settlement or negotiation or mediation thereof, is or shall be construed to be a finding, admission, or concession of (a) any violation of any statute or law; (b) any fault, liability, or wrongdoing; or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the Litigation, or any other proceeding.

C. Continuing Jurisdiction.

Without in any way affecting the finality of this Final Settlement Approval & Bar Order, the Court retains continuing and exclusive jurisdiction over the Receiver, the Receivership Estate, and all Bar Order Parties for purposes of (i) the Approval Motion, the Preliminary Approval & Scheduling Order, the Notice, the Distribution Plan(s), and this Final Settlement Approval & Bar Order (including, without limitation, the injunctions, bar orders, and releases herein); (ii) entering orders concerning the administration or implementation of the Settlement, the Agreement, and the Distribution Plan(s); (iii) the continuation of this proceeding and the Receivership; and (iv) the activities and conduct of the Receiver. This provision is intended to be consistent with the agreement between the Receiver and Mayer Brown, reflected in Section XVIII of the Agreement, that the Broward Court otherwise shall have exclusive jurisdiction over disputes between the two of them.

D. Finality.

This Final Settlement Approval & Bar Order (i) includes a permanent injunction appealable under 28 U.S.C. § 1292(a)(1), and (ii) resolves all claims that are pending in this

proceeding with respect to an asset of the Receivership Estate—namely, the Receiver’s claims against Mayer Brown. Upon entry of this Final Settlement Approval & Bar Order, there is no further action required by this Court to resolve the Receiver’s claims against Mayer Brown. No claims that remain pending in this proceeding seek the same relief, and there is no factual overlap between the matters resolved in this Final Settlement Approval & Bar Order and the claims and issues left to be addressed in this proceeding. As such, the Court expressly finds and determines that this Final Settlement Approval & Bar Order is a partial final judgment under Federal Rule of Civil Procedure 54(b). The Court also expressly finds and determines, pursuant to Rule 54(b), that there is no just reason for any delay in entering this partial final judgment. To the contrary, any delay in this Final Settlement Approval & Bar Order reaching finality would defeat the purpose of the Settlement (and impede the progress of this Receivership proceeding) because the Settlement is expressly conditioned on this Final Settlement Approval & Bar Order becoming Final as defined in the Agreement. Deferring finality of this Final Settlement Approval & Bar Order until the Receivership proceeding is fully and finally concluded as to all matters and all issues would delay the effectiveness of the Settlement and thereby delay the payment of the Settlement Amount into the Receivership Estate. For all these reasons, the Court intends this Final Settlement Approval & Bar Order to become Final upon the expiration of any right to appeal, despite the continued pendency of this proceeding, including the Receivership. Pursuant to Rule 54(b), the Court expressly directs the Clerk of the Court to immediately enter this Final Settlement Approval & Bar Order as a partial final judgment.

E. Service of Final Settlement Approval & Bar Order.

Counsel for the Receiver shall serve this Final Settlement Approval & Bar Order via email, first-class mail or international delivery service, on any Person who filed an objection to approval of the Settlement, the Agreement, or this Final Settlement Approval & Bar Order.

DONE AND ORDERED in Fort Myers, Florida, on this _____ day of _____, 2020.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All counsel of record

EXHIBIT E

to Mayer Brown-Receiver Settlement Agreement

**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, L.P.; FOUNDING PARTNERS)
STABLE-VALUE FUND II, L.P.;)
FOUNDING PARTNERS GLOBAL FUND,)
LTD.; and FOUNDING PARTNERS)
HYBRID-VALUE FUND, L.P.,)

Plaintiff,)

v.)

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

Defendants.)

No. 10-49061

Chief Judge Jack Tuter

FINAL JUDGMENT CONCERNING CLAIMS AGAINST MAYER BROWN LLP

THIS CAUSE, having come for hearing upon the Receiver’s Motion for Approval of Settlement and Entry of Partial Final Judgment Concerning Claims Against Mayer Brown LLP (the “Motion”), counsel for the Receiver and for Mayer Brown having appeared, the Court having considered the Motion and reviewed the Settlement Agreement between the Receiver and Mayer Brown, and the Court having been advised that Ernst & Young does not object to such settlement or the entry of this order, the Court hereby **GRANTS** the Motion. It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement, which is attached as Exhibit 1 to the Motion.
2. The Court has reviewed the materials submitted with the Motion concerning the approval of the Settlement Agreement by the U.S. District Court for the Middle District of Florida

(the “Federal Court”). To the extent any of the claims in this action asserted against Mayer Brown are derivative in nature and may require approval of this Court with respect to the settlement of such claims, this Court adopts the findings of the Federal Court with respect to (a) the adequacy and appropriateness of the Notice process, set forth at pages ___ of the Federal Court’s _____, 2020 Final Settlement Approval & Bar Order (the “Approval & Bar Order”); and (b) the fairness, reasonableness, and adequacy of the Settlement and the Settlement Amount, set forth at pages ___ of the Approval & Bar Order.

3. In addition, the Court finds that the Settlement, including, without limitation, the Settlement Amount, was reached following an extensive investigation of the facts and active litigation of claims and defenses, and that it resulted from vigorous, good-faith, arm’s-length negotiations involving experienced and competent counsel, including two formal mediations conducted over a period of years. There is no indication of collusion, bad faith, or wrongful conduct between the parties in connection with reaching agreement on the Settlement and the Settlement Amount, and the Court affirmatively finds that there has been none. As such, the Court expressly finds that the Settlement Agreement was entered into in good faith within the meaning of Fla. Stat. § 768.31(5), such that Mayer Brown is entitled to all protections provided to settling alleged tortfeasors under such statute.

4. Accordingly, the Settlement, the terms of which are set forth in the Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement.

5. Nothing in this Judgment Order, or the release agreement between Mayer Brown and Ernst & Young LLP that is attached to the Agreement as Exhibit H, shall impair or affect or

be construed to impair or affect, in any way whatsoever, any right of any Bar Order Party or any other Person to: (a) claim, based upon the Settlement or payment of the Settlement Amount, a credit or offset against any judgment amount, if and to the extent provided by any applicable statute, code, or rule of law; or (b) designate a “responsible party” under Fla. Stat. § 768.81(3) and/or *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), and similar statutes or rules in other jurisdictions; provided, for the avoidance of doubt, that neither shall anything in this paragraph be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification, or otherwise) upon Mayer Brown or any other Mayer Brown Released Party. However, nothing in this Judgment Order shall alter the various agreements on discovery matters that are reflected in Paragraph 61 of the Agreement; the release between Gunlicks, Delaney, and Mayer Brown that is attached as Exhibit B to the Agreement; or the release agreement between Mayer Brown and Ernst & Young LLP that is attached as Exhibit H to the Agreement.

6. Nothing in this Judgment Order or the Settlement Agreement (including its exhibits), and no aspect of the Settlement or negotiation or mediation thereof, is or shall be construed to be a finding, admission, or concession of (a) any violation of any statute or law, (b) any fault, liability, or wrongdoing, or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in this action, or any other proceeding.

7. This Judgment Order shall supersede in all respects this Court’s _____, 2020 Order with Preliminary Findings Concerning Proposed Settlement Between the Receiver and Mayer Brown LLP.

8. The Court expressly finds and determines that this Judgment Order shall be final and appealable with respect to all claims against Mayer Brown consistent with Florida Rule of Appellate Procedure 9.110(k).

9. All claims for relief between the Receiver and Mayer Brown are dismissed with prejudice. All pending motions filed by the Receiver or Mayer Brown, other than the Motion granted by this Judgment Order, are deemed withdrawn. Consistent with the terms of the Settlement Agreement, no costs, expenses, or attorneys' fees are being awarded by this Court.

10. This is a final judgment as to all claims against Mayer Brown in this proceeding. The Clerk of the Court is directed to enter immediate judgment as to Mayer Brown in conformity herewith.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this _____ day of _____, 2020.

HONORABLE JACK TUTER
Chief Judge

Copies furnished:
All counsel of record

EXHIBIT F
to Mayer Brown-Receiver Settlement Agreement

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-JES-CM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

NOTICE OF SETTLEMENT AND BAR ORDER PROCEEDINGS

PLEASE TAKE NOTICE that Daniel S. Newman (“the Receiver”) in his capacities as (a) the court-appointed receiver for the Founding Partners Entities¹, and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, has reached an agreement (the “Settlement Agreement”) to settle all claims asserted or that could have been asserted against Mayer Brown LLP (“Mayer Brown”) in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), in a case that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Litigation”).

¹ The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.).

PLEASE TAKE FURTHER NOTICE that the Receiver has filed a Motion to Approve the Proposed Settlement with Mayer Brown LLP, to Approve the Proposed Notice of Settlement with Mayer Brown LLP, and to Enter the Final Settlement Approval & Bar Order, in *SEC v. Founding Partners Cap. Mgmt. Co.*, No. 2:09-CV-229-JES-CM (M.D. Fla.) (the “SEC Action”). Copies of the Settlement Agreement, as well as complete copies of the Motion and other supporting papers may be obtained from the Court’s docket in the SEC Action [ECF No. ____], and are also available on the Receiver’s website (<http://www.foundingpartners-receivership.com>). Copies of these documents may also be requested by email, by sending the request to _____; or by telephone, by calling _____. All capitalized terms not defined in this Notice of Settlement and Bar Order Proceedings are defined in the Settlement Agreement, which is attached as Exhibit 1 to the Motion.

PLEASE TAKE FURTHER NOTICE that the Motion requests that the Court approve the Settlement and enter a bar order permanently enjoining all parties to be barred (defined in the Settlement Agreement as Bar Order Parties²) from pursuing Settled Claims³ against Mayer Brown and the Mayer Brown Released Parties—including claims you may possess.

² “Bar Order Parties” means (1) the Receiver; (2) the Receivership Estate; (3) the Founding Partners Entities; (4) the Assignors; (5) the Approved Claimants; (6) the Unapproved Claimants; (7) Ernst & Young LLP; (8) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities (William L. Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson); and (9) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of the Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more Founding Partners Funds, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

³ “Settled Claim(s)” means any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Bar Order Party ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with

PLEASE TAKE FURTHER NOTICE that the settlement amount is \$390 million United States Dollars (\$390,000,000.00) (the “Settlement Amount”). The Settlement Amount will be deposited with and distributed by the Receiver pursuant to a Distribution Plan (or plans) hereafter to be approved by the Court in the SEC Action.

This matter may affect your rights, and you may wish to consult an attorney.

The material terms of the Settlement Agreement are as follows:

- a) Mayer Brown will pay the Settlement Amount on the timing and pursuant to the terms of the Settlement Agreement, at which time such amount will be deposited with the Receiver as required pursuant to the Settlement Agreement;
- b) The Receiver will fully release the Mayer Brown Released Parties⁴ from Settled Claims, which include, in general, claims arising from or relating to the Founding

(i) any of the conduct complained of in the SEC Action or the Litigation; (ii) any of the Founding Partners Entities; (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities; (iv) Mayer Brown’s relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (v) Mayer Brown’s provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (vi) Mayer Brown’s relationship with, services for, or conduct with respect to MasterFactor, Inc. and/or any of its personnel, or Mayer Brown’s provision of services to or for the benefit of or on behalf of MasterFactor, Inc.; (vii) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (viii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees; (ix) any request or demand pursuant to 735 ILCS 5/8-2005 or similar statutes, rules, or authorities related to or arising from Mayer Brown’s relationship with, services for, or conduct with respect to MasterFactor, Inc., any one or more of the Founding Partners Entities, and/or any of the personnel of any of the Founding Partners Entities, including but not limited to Gunlicks; (x) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Mayer Brown, Mayer Brown’s counsel, or any other Person; or (xi) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009. “Settled Claims” specifically includes, without limitation, all claims (or facts relating thereto) against Mayer Brown or the Mayer Brown Released Parties that each Bar Order Party does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected his or its decisions with respect to this Agreement and the Settlement. See Paragraph 20 of the Settlement Agreement for a complete definition of “Settled Claims.” [ECF No. ____]

⁴ “Mayer Brown Released Parties” means Mayer Brown, Mayer Brown LLP, Mayer Brown (a Hong Kong partnership), Mayer Brown (Beijing) Intellectual Property Agency Co. Ltd., Mayer Brown (Singapore) Pte. Limited (No.201114070Z), Mayer Brown (Thailand) Limited, Mayer Brown (Vietnam) LLC, Mayer Brown Beijing Representative Office, HK, Mayer Brown Consulting (Singapore) Pte. Ltd. (No.201407965N), Mayer Brown Europe-Brussels LLP, Mayer Brown Gaikokuho Jimu Bengoshi Jimusho (GJBJ), Mayer Brown International LLP, Mayer Brown Mexico S.C. (a State of Durango Sociedad Civil), Mayer Brown Shanghai Representative Office (Hong Kong), Mayer Brown, a French Corporation (SELAS), Tauil & Chequer Advogados — Brasília, Tauil e Chequer Advogados — Rio de Janeiro, Tauil e Chequer Advogados (Vitoria), and Tauil e Chequer Sociedade de Advogados (São Paulo), as well as all of their respective present and former partners, limited partners, general partners, parents, officers,

Partners Entities, William L. Gunlicks, the matters raised in the SEC Action or this Litigation, or any conduct by the Mayer Brown Released Parties relating to the Founding Partners Entities or William L. Gunlicks, with prejudice;

- c) The Settlement Agreement requires entry of a Final Settlement Approval & Bar Order in the SEC Action, which will permanently enjoin Bar Order Parties, which include all Approved and Unapproved Claimants, from bringing, encouraging, assisting, continuing, or prosecuting, against Mayer Brown or any of the Mayer Brown Released Parties, the Litigation, or any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including, without limitation, contribution or indemnity claims, arising from or relating to a Settled Claim;
- d) The Receiver will disseminate notice of the Settlement Agreement (*i.e.*, this Notice) to all Bar Order Parties, using the contact information in the Receiver's files, through one or more of the following: mail, email, international delivery, CM/ECF notification, and/or publication on the website maintained by the Receiver (<http://www.foundingpartners-receivership.com>);
- e) Approved Claimants who receive funds from the Settlement Amount pursuant to the Distribution Plan will, upon accepting the funds, confirm that they fully release the Mayer Brown Released Parties from any and all Settled Claims; and
- f) After the Final Settlement Approval & Bar Order is entered, the Litigation will be dismissed with prejudice as to Mayer Brown, with each party bearing its own costs and attorneys' fees.

The final hearing on the Motion is set for [_____] (the "Final Approval Hearing"). Any objection to the Settlement Agreement or its terms, the Motion, or the Final Settlement Approval & Bar Order must be filed, in writing, with the Court in the SEC Action no later than [_____]. Any objections not filed by this date will be deemed waived and will not be considered by the Court. Those wishing to appear and to orally present their written

directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. "Mayer Brown Released Parties" shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims. For the avoidance of doubt, "Mayer Brown Released Parties" does not include Ernst & Young LLP or any other Person, besides Mayer Brown or its counsel in the Litigation, against whom the Receiver, before the Agreement Date, has provided written notice to Litigation counsel for Mayer Brown that he has filed a claim or cause of action that remains pending in any Forum.

objections at the Final Approval Hearing must include a request to so appear within their written objections.

The date, time, and place for the Final Approval Hearing shall be subject to adjournment or change by the Court without further notice other than that which may be posted by means of ECF in the SEC Action, which the Receiver will also post on his website (<http://www.foundingpartners-receivership.com>).

EXHIBIT G

to Mayer Brown-Receiver Settlement Agreement

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-JES-CM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

PRELIMINARY APPROVAL OF SETTLEMENT AND SCHEDULING ORDER

Before the Court is the Motion to Approve Proposed Settlement with Mayer Brown LLP, to Approve the Proposed Notice of Settlement with Mayer Brown LLP, and to Enter the Final Settlement Approval & Bar Order (the “Motion”), filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the receiver appointed by this Court for the Founding Partners Entities¹, and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors.”

¹ The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.).

The Motion concerns a proposed settlement (the “Settlement”) among and between the Receiver and Mayer Brown LLP (“Mayer Brown”), one of the defendants in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Litigation”). The Settlement Agreement at issue is attached as Exhibit 1 to the Motion [ECF No. ___]. All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement.

In the Motion, the Receiver seeks the Court’s approval of the terms of the Settlement, including entry of a bar order in this proceeding (the “Final Settlement Approval & Bar Order”). The Court enters this Order to: (i) set forth preliminary findings concerning the proposed Settlement; (ii) establish the procedure for providing notice of the terms of the Settlement, including the proposed Final Settlement Approval & Bar Order; (iii) set the deadline for filing objections to the Settlement or the proposed Final Settlement Approval & Bar Order; (iv) set the deadline for responding to any objection so filed; and (v) set the date of the final approval hearing regarding the Settlement and the Final Settlement Approval & Bar Order (the “Final Approval Hearing”).

I. Preliminary Findings on Potential Approval of the Settlement.

1. Based upon the Court’s review of the terms of the Settlement Agreement, the arguments presented in the Motion, and the Motion’s accompanying exhibits, the Court preliminarily finds that the Settlement is fair, reasonable, and equitable; has no obvious deficiencies; and appears to be the product of serious, informed, good-faith, and arm’s-length negotiations between the Receiver and Mayer Brown. The Court, however, reserves a final ruling with respect to the terms of the Settlement until after the Final Approval Hearing referenced below in Paragraph 2.

II. Final Approval Hearing.

2. The Final Approval Hearing will be held before the Honorable John E. Steele of the United States District Court for the Middle District of Florida, United States Courthouse, 2110 First Street, Fort Myers, Florida 33901, in Courtroom 6A, at __:__ .m. on _____. The purposes of the Final Approval Hearing will be to: (i) determine whether the Court should approve the terms of the Settlement; (ii) determine whether the Court should enter the Final Settlement Approval & Bar Order, which is to encompass the terms and relief set forth in Exhibit D to the Settlement Agreement; (iii) rule upon any objections to the Settlement or Final Settlement Approval & Bar Order; and (iv) rule upon such other matters as the Court may deem appropriate.

III. Notice.

3. The Court approves the form of Notice attached as Exhibit F to the Settlement Agreement and finds that the methodology, distribution, and dissemination of Notice described in the Motion: (i) constitute the best practicable notice under the circumstances; (ii) are reasonably calculated, under the circumstances, to apprise all Bar Order Parties of the Settlement, the releases therein, and the injunctions provided for in the Final Settlement Approval & Bar Order; (iii) are reasonably calculated, under the circumstances, to apprise all Bar Order Parties of the right to object to the Settlement or the Final Settlement Approval & Bar Order and to appear at the Final Approval Hearing; (iv) constitute due, adequate, and sufficient notice; (v) meet the requirements of applicable law, including the Federal Rules of Civil Procedure, the United States Constitution (including due process), and the Rules of the Court; and (vi) will provide to all relevant Persons a full and fair opportunity to be heard on these matters. Therefore:

a. The Receiver is hereby directed, no later than five (5) calendar days after entry of this Order, to cause the Notice in substantially the same form attached as Exhibit F to the Settlement Agreement to be sent via electronic mail, first-class mail or international

delivery service to all Bar Order Parties using the contact information in the Receiver's files, and sent via electronic service to all counsel of record for any Person who is, at the time of Notice, a party in the SEC Action or the Litigation.

b. The Receiver is hereby directed, no later than five (5) calendar days after entry of this Order, to cause the Settlement Agreement, the Motion, this Order, the Notice, and all exhibits and appendices attached to these documents, to be posted on the Receiver's website (<http://www.foundingpartners-receivership.com>). Upon request of any Bar Order Party receiving Notice under Paragraph 3(a) of this Order, the Receiver may provide such Bar Order Party with a copy of the settlement materials posted to his website by email or in hard copy.

c. No later than ten (10) calendar days before the Final Approval Hearing, the Receiver shall cause to be filed with the Clerk of this Court a notice of his compliance with subparts (a) and (b) of this Paragraph.

IV. Objections and Appearances at the Final Approval Hearing.

4. Any Person who wishes to object to the terms of the Settlement or the Final Settlement Approval & Bar Order and/or to appear at the Final Approval Hearing must first file an objection, in writing, with the Court, either by ECF or by mailing the objection to the Clerk of the United States District Court for the Middle District of Florida, 2110 First Street, Fort Myers, Florida 33901, with such objections due no later than [_____]. All objections filed with the Court must:

- a. contain the name, address, telephone number, and (if applicable) email address of the Person filing the objection;
- b. contain the name, address, telephone number, and email address of any attorney representing the Person filing the objection;

- c. be signed by the Person filing the objection, or his or her attorney;
- d. state, in detail, the basis for any objection;
- e. attach any document the Person believes the Court should consider in ruling on the Settlement or the Bar Order; and
- f. make a request to appear at the Final Approval Hearing, if the Person filing the objection wishes to so appear.

The Court will determine the manner of conducting the Final Approval Hearing and will limit the ability of any Bar Order Party (other than the Receiver) to appear at such Final Approval Hearing if such Bar Order Party has not first filed a timely written objection and request to appear, as set forth in subparts (a) through (f) of this Paragraph. Copies of any objections filed must be served by ECF, or by email or first class mail, upon each of the following:

Counsel for the Receiver:

Leo R. Beus
Scot C. Stirling
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: lbeus@beusgilbert.com
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Jonathan Etra
Christopher Cavallo
NELSON MULLINS RILEY &
SCARBOROUGH LLP
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Counsel for Mayer Brown:

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Eugene K. Pettis
Debra P. Klauber
HALICZER, PETTIS & SCHWAMM
One Financial Plaza
100 S.E. 3rd Avenue, 7th Floor
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Telephone: (954) 523-9922
Facsimile: (954) 522-2512
Email: epettis@hpslegal.com
dklauber@hpslegal.com

5. Any Person filing an objection shall be deemed to have submitted to the jurisdiction of this Court for purposes of that objection, the Settlement, and the Final Settlement Approval & Bar Order. Potential objectors who do not present opposition by the time and in the manner set forth above shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and shall be forever barred from raising such objections in this action or any other action or proceeding. Persons do not need to appear at the Final Approval Hearing or take any other action to indicate their approval of the Settlement and/or the proposed Final Settlement Approval & Bar Order.

6. Mayer Brown shall be permitted to appear at the Final Approval Hearing, if it chooses, without formally intervening in this proceeding.

V. Responses to Objections.

7. Either Party to the Settlement, or the SEC, may respond to an objection filed pursuant to Paragraph 4 by filing a response in this proceeding no later than [_____]. Mayer Brown shall be permitted to file such a response, if it chooses, without formally intervening in this proceeding. To the extent any Person who has filed an objection cannot be served with the response to such objection by action of the Court's CM/ECF system, the response must be served to the email and/or mailing address provided by that Person.

VI. Adjustments Concerning Hearing and Deadlines.

8. The date, time, and place for the Final Approval Hearing, and the deadlines and date requirements in this Order, shall be subject to adjournment or change by this Court without further notice other than that which may be posted by means of ECF in this proceeding, which the Receiver shall also post on his website (<http://www.foundingpartners-receivership.com>), except the Receiver shall deliver notice of any adjournment or change in the Final Approval Hearing date to anyone who has filed an objection pursuant to Paragraph 4 herein, using the email or mailing address provided in such objection.

VII. Entry of Injunction.

9. If the Settlement is approved by the Court, the Court will enter the Final Settlement Approval & Bar Order in this proceeding. If entered, the Final Settlement Approval & Bar Order will permanently enjoin all Bar Order Parties, including Approved and Unapproved Claimants, from bringing, encouraging, assisting, continuing, or prosecuting, against Mayer Brown or any of the Mayer Brown Released Parties, the Litigation, or any other action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including, without limitation, contribution or indemnity claims, arising from or relating to a Settled Claim.

VIII. Use of Order.

10. The Court understands that the Parties to the Settlement Agreement do not intend anything in the Settlement Agreement and its exhibits, the Motion, or this Order to be construed, deemed, or used as an admission, concession, or declaration by or against Mayer Brown of any fault, wrongdoing, breach or liability, or by or against the Receiver that his claims in the Litigation lack merit or that the relief he has sought in that Litigation is inappropriate, improper, or unavailable. Nothing in this Order is intended as a finding, admission, concession, or declaration that any party to the Litigation has waived any defenses or claims he or it may have. This Order

and the Settlement Agreement (along with its exhibits) are intended to be filed, offered, received in evidence, or otherwise used in this or any other action or proceeding (including any arbitration), only for the following purposes and for no other purposes: (i) to give effect to or enforce the Settlement or the terms of this Order (or the Final Settlement Approval & Bar Order, if entered by this Court), or (ii) in connection with the approval of the Settlement in the Litigation, entry of judgment in the Litigation, or any proceedings to effectuate a stay of the Litigation in light of the Settlement.

DONE AND ORDERED in Fort Myers, Florida, on this _____ day of _____, 2020.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All counsel of record

EXHIBIT H

to Mayer Brown-Receiver Settlement Agreement

RELEASE

THIS RELEASE (the “Release”) is made and entered into by and between Ernst & Young LLP (“EY”) and Mayer Brown LLP (“Mayer Brown”) (each a “Release Party” and, collectively, the “Release Parties”).

WHEREAS, on April 20, 2009, the U.S. Securities and Exchange Commission (the “SEC”) filed *SEC v. Founding Partners Capital Management Co. and William L. Gunlicks*, Civil Action No. 2:09-cv-00229-JES-SPC (M.D. Fla.) (the “SEC Action”), alleging that Founding Partners Capital Management Company and William L. Gunlicks (“Gunlicks”) had engaged in fraudulent conduct affecting investors in one or more of the Founding Partners Funds (defined below);

WHEREAS, in an order dated April 20, 2009, in the SEC Action (ECF No. 9), the United States District Court for the Middle District of Florida (the “Federal Court”) granted the SEC’s Emergency Motion for the Appointment of a Receiver over the Founding Partners Entities (defined below), with the powers, duties, and authority to take possession of, and administer and manage the business affairs of, the assets, rights of action, properties, estates, books and records, and other tangible and intangible monies and property of the Founding Partners Entities (the “Receivership Estate”), all as set forth further in that order;

WHEREAS, in that same order (ECF No. 9), a receiver was appointed for the Receivership Estate, with all the powers described and enumerated in that order, as amended by an order in that same matter, dated May 20, 2009 (ECF No. 73);

WHEREAS, in a May 20, 2009 order (ECF No. 73), Daniel S. Newman was appointed as Receiver, replacing the prior receiver for the Founding Partners Entities;

WHEREAS, on December 30, 2010, the Receiver filed a Complaint in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), with the

case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Litigation”), naming Mayer Brown and EY as defendants and asserting claims of the Founding Partners Funds, with certain amendments thereafter adding claims of certain investors in the Founding Partners Funds;

WHEREAS, on August 16, 2018, the Receiver filed a Complaint for Damages and Demand for Arbitration with the American Arbitration Association (the “AAA”), with the case captioned *Newman v. Ernst & Young LLP*, Case No. 01-18-0003-2029 (the “Arbitration”), asserting claims of the Founding Partners Funds and naming EY as a defendant;

WHEREAS, the Receiver and Mayer Brown have agreed to settle and resolve the claims, disputes, and issues between them that arise from or relate to the Litigation and the Arbitration, as set forth more fully in the Mayer Brown-Receiver Settlement (defined below), to which this Release is attached as that agreement’s Exhibit H; and

WHEREAS, EY and Mayer Brown desire to fully, finally, and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them that arise from or relate to the Litigation or the Arbitration.

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, EY and Mayer Brown agree as follows:

1. Defined Terms:

a. “Mayer Brown Released Parties” means Mayer Brown, Mayer Brown LLP, Mayer Brown (a Hong Kong partnership), Mayer Brown (Beijing) Intellectual Property Agency Co. Ltd., Mayer Brown (Singapore) Pte. Limited (No.201114070Z), Mayer Brown (Thailand) Limited, Mayer Brown (Vietnam) LLC, Mayer Brown Beijing Representative Office, HK, Mayer Brown Consulting (Singapore) Pte. Ltd. (No.201407965N), Mayer

Brown Europe-Brussels LLP, Mayer Brown Gaikokuho Jimu Bengoshi Jimusho (GJBJ), Mayer Brown International LLP, Mayer Brown Mexico S.C. (a State of Durango Sociedad Civil), Mayer Brown Shanghai Representative Office (Hong Kong), Mayer Brown, a French Corporation (SELAS), Tauil & Chequer Advogados — Brasília, Tauil e Chequer Advogados — Rio de Janeiro, Tauil e Chequer Advogados (Vitoria), and Tauil e Chequer Sociedade de Advogados (São Paulo), as well as all of their respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Mayer Brown Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Released Claims.

b. “EY Released Parties” means EY, Ernst & Young Global Limited, and each and all of the current and former member firms of Ernst & Young Global Limited (including, without limitation, EY Bermuda Ltd. and EY Cayman Ltd.), as well as all of their respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “EY Released

Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Released Claims.

c. “Execution Date” means the date on which both Release Parties have executed this Release by signing in the space for their respective signatures that appears at the end of this Release.

d. “Founding Partners Entities” means Founding Partners Capital Management Company and the Founding Partners Funds (defined below).

e. “Founding Partners Funds” means Founding Partners Stable-Value Fund, L.P. (formerly known as Founding Partners Multi-Strategy Fund, L.P.); Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (formerly known as Founding Partners Equity Fund, L.P.).

f. “Mayer Brown-Receiver Settlement” means the settlement agreement, entered into between the Receiver and Mayer Brown, resolving the Litigation as between the two of them, and to which this Release is appended as **Exhibit H**.

g. “Released Claims” means any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Release Party ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) any of the conduct complained of in the SEC Action, the Litigation, or

the Arbitration; (ii) any of the Founding Partners Entities; (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities; (iv) Mayer Brown's or EY's relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (v) Mayer Brown's or EY's provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (vi) Mayer Brown's or EY's relationship with, services for, or conduct, if any, with respect to MasterFactor, Inc. and/or any of its personnel, or Mayer Brown's or EY's provision of services to or for the benefit of or on behalf of MasterFactor, Inc., if any; (vii) Mayer Brown's or EY's relationship with, services for, conduct with respect to, or provision of services to or for the benefit of or on behalf of Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees, if any; (viii) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (ix) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees; (x) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, the Arbitration, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Mayer Brown, Mayer Brown's counsel, EY, EY's counsel, or any other Person; or (xi) the subject

matter of the Litigation, the SEC Action, the Arbitration, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009. For the avoidance of doubt, “Released Claims” do not include any actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands that concern, relate to, or arise out of relationships, services, engagements, or dealings between, on the one hand, any Mayer Brown Released Party and, on the other hand, any EY Released Party, where such relationships, services, engagements or dealings are unrelated to and do not concern any (a) Founding Partners Entity, (b) Gunlicks, (c) MasterFactor, Inc., or (d) Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., or Success Healthcare, Inc. “Released Claims” specifically includes, without limitation, all claims (or facts relating thereto) that fall within the scope of one or more of (i) through (xi) above and that each Release Party does not know or suspect to exist in his or its favor at the time of release, which, if known by that Person, might have affected its decisions with respect to this Release (“Unknown Claims”). With respect to the Released Claims (which include the Unknown Claims), each Release Party expressly waives, releases, and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Each Release Party acknowledges that it may hereafter discover facts different from, or in addition to, those which such Release Party now knows or believes to be true with respect to the Settled Claims, but nonetheless agrees that this Release, including the releases granted herein, will remain binding and effective in all respects notwithstanding such discovery. Unknown Claims include contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. These provisions concerning unknown and unsuspected claims and the inclusion of Unknown Claims in the definition of Released Claims were separately bargained for and are an essential element of this Release. Each Release Party understands and acknowledges the significance and the consequences of this waiver and confirms that it either has discussed or has been given an opportunity to discuss such matters with counsel of its choice.

h. “Settlement Effective Date” shall have the same meaning as in the Mayer Brown-Receiver Settlement, which defines “Settlement Effective Date” in its Paragraph 23.

2. Release of Mayer Brown: Effective as of the Settlement Effective Date, EY fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Released Claims against the Mayer Brown Released Parties; except that nothing in this Paragraph 2 releases any claim arising from this Release or its representations, or concerning the enforcement of this Release.

3. Release of EY: Effective as of the Settlement Effective Date, Mayer Brown fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Released Claims

against the EY Released Parties; except that nothing in this Paragraph 3 releases any claim arising from this Release or its representations, or concerning the enforcement of this Release.

4. Mutual Covenants Not to Sue: Effective as of the Execution Date, EY covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against the Mayer Brown Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding, whether in a court or any other forum, and regardless of whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, regarding any Released Claim. Effective as of the Execution Date, Mayer Brown covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against the EY Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding, whether in a court or any other forum, and regardless of whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, regarding any Released Claim. However, the Release Parties each retain the right to sue to effectuate or enforce this Release, and Mayer Brown retains the right to seek the relief and orders contemplated in Paragraphs 37 through 40 and 45 of the Mayer Brown-Receiver Settlement.

5. No Effect on Right to Apportionment or Apportionment of Fault or Setoff: Nothing in this Release shall in any way affect or impair or be construed to affect or impair any rights that EY, absent the Release, would otherwise have under an applicable statute, code, or rule of law to obtain any of the following in the Litigation, the Arbitration, or in any subsequently filed related arbitration by the Receiver against EY: (i) an allocation or apportionment of fault to Mayer

Brown or any other Mayer Brown Released Party, or (ii) a setoff in the amount of the Settlement Amount or such other amount as provided by applicable statute, code, or rule of law.

6. Termination: If the Settlement Effective Date does not occur, or if the Mayer Brown-Receiver Settlement terminates pursuant to its Section XI, then this Release (i) shall be deemed null and void and of no further effect whatsoever (except for the provisions of this Paragraph 6 and Paragraph 10, which shall survive), (ii) shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and (iii) shall not be the subject of or basis for any claims by or against any Release Party. If this Release terminates pursuant to this Paragraph 6, then each Party shall be returned to the position such Party occupied immediately before executing this Release. The Release Parties do not have the right to withdraw from, or otherwise terminate, this Release for any reason other than as provided in this Paragraph 6.

7. Publicity: Neither Release Party or their respective counsel may communicate with the media or a media representative so as to encourage interest in or publicity about the Mayer Brown-Receiver Settlement, the Receiver's claims against Mayer Brown in the Litigation, or this Release. To the extent a Release Party is contacted by the media or a media representative seeking comment on such matters: (i) Mayer Brown shall respond consistent with Paragraphs 66 through 68 of the Mayer Brown-Receiver Settlement, and (ii) EY may provide such media representative with a statement agreed upon in advance by Mayer Brown and EY. Nothing in this Paragraph 7 is intended to curtail or limit in any way the ability of any Release Party to make statements in the Federal Court, the Broward Court, the AAA, or in the arbitral forum of any subsequently filed related arbitration, or of EY to make statements to or interact with the media or media representative(s) concerning the Receiver's claims against EY in the Litigation, the Arbitration, or any subsequently filed related arbitration.

8. Discovery: To the extent that EY seeks discovery from Mayer Brown (or any current or former Mayer Brown partners or personnel) in connection with the Litigation, the Arbitration, or any subsequently filed related arbitration by the Receiver against EY, Mayer Brown agrees to provide equivalent discovery to that which the Receiver previously obtained in the Litigation, including, without limitation, testimony from up to eleven Mayer Brown witnesses (including, without limitation, current or former partners or personnel and/or testimony pursuant to Florida Rule of Civil Procedure 1.310(b)(6) or similar rules). With respect to depositions of former partners or personnel who are beyond the scope of Mayer Brown's control, Mayer Brown agrees to use its best efforts to secure such testimony. Upon request from EY, Mayer Brown also agrees to facilitate the authentication of any Mayer Brown documents by correspondence or stipulation. Nothing herein shall limit or waive any right EY has to seek additional discovery (or trial testimony) from Mayer Brown (or its current or former partners or personnel) in the Litigation, the Arbitration, or any subsequently filed related arbitration by the Receiver against EY; nor shall it limit or waive any right of Mayer Brown (or any of its current or former personnel) to object to or resist such additional discovery (or trial testimony).

9. No Challenge; Parties to Advocate: The Release Parties shall not challenge the approval of the Settlement, the Interim Order (as that term is defined in Paragraph 12 of the Mayer Brown-Receiver Settlement), the Final Settlement Approval & Bar Order (as that term is defined in Paragraph 7 of the Mayer Brown-Receiver Settlement), or the Judgment Order (as that term is defined in Paragraph 13 of the Mayer Brown-Receiver Settlement), nor shall they encourage or assist any Person in challenging the Settlement, the Interim Order, the Final Settlement Approval & Bar Order, or the Judgment Order. To the extent the Federal Court or the Broward Court seeks

comment from or make inquiries of the Release Parties with respect to the Settlement or such orders, the Release Parties agree to advocate in favor of the Settlement and such orders.

10. No Admission of Fault: This Release, and the negotiation thereof, shall in no way constitute, be construed as, or be evidence of an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Release Parties with regard to any of the complaints, claims, allegations, or defenses asserted or that could have been asserted in the Litigation, the Arbitration, or any other proceeding relating to any Released Claim, or any other proceeding in any Forum. This Release is to avoid any potential litigation between Mayer Brown and EY concerning the Released Claims and to resolve issues between Mayer Brown and EY so that the Mayer Brown-Receiver Settlement can proceed. This Release and evidence thereof shall not be used, directly or indirectly, in any way, in the Litigation, the SEC Action, the Arbitration, or in any other proceeding, other than (a) as may be requested or directed by the Federal Court or the Broward Court in connection with proceedings on the Mayer Brown-Receiver Settlement, in which case Mayer Brown shall notify and consult with EY regarding such disclosure, (b) as may be requested or directed by the AAA panel in the Arbitration or the arbitrators in any subsequently filed related arbitration by the Receiver against EY; or (c) to enforce the terms of this Release.

11. No Additional Claims: EY represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against Mayer Brown or any of the other Mayer Brown Released Parties that is both within the scope of the Released Claims and is not released under this Release. Mayer Brown represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or

has the authority to assert against EY or any of the other EY Released Parties that is both within the scope of the Released Claims and is not released under this Release.

12. No Assignment, Encumbrance, or Transfer: EY represents and warrants that it is the owner of the Released Claims that it is releasing under this Release and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Released Claims that it is releasing under this Release. Mayer Brown represents that it is the owner of the Released Claims that it is releasing under this Release and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Released Claims that it is releasing under this Release.

13. Binding Agreement: As of the Execution Date, this Release shall be binding upon and shall inure to the benefit of the Release Parties, as well as their respective heirs, executors, administrators, successors, and assigns, although certain provisions do not become effective until the Settlement Effective Date (as set forth in this Release). No Release Party may assign any of its rights or obligations under this Agreement without the express written consent of the other Release Party.

14. Disclaimer of Reliance: The Release Parties represent and acknowledge that in negotiating and entering into this Release, they have not relied on, and have not been induced by, any representation, warranty, statement, estimate, communication, or information, of any nature whatsoever, whether written or oral, by or on behalf of the other Release Party or any agent of the other Release Party, or concerning such other Release Party, except as expressly set forth in this Release. To the contrary, each of the Release Parties affirmatively represents and acknowledges that the Release Party is relying solely on the express terms contained within this Release. The Release Parties each have consulted with legal counsel and advisors, have considered the

advantages and disadvantages of entering into this Release, and have relied solely on their own judgment and the advice of their respective legal counsel in negotiating and entering into this Release.

15. Third-Party Beneficiaries: This Release is not intended to and does not create rights enforceable by any person other than the Release Parties (or their respective heirs, executors, administrators, successors, and assigns, as provided in Paragraph 13 of this Agreement); except, however, that if this Release provides that a person is released or should not be sued as a consequence of a covenant not to sue, then such person may enforce the release or covenant not to sue as it relates to said person.

16. Negotiation and Drafting: The Release Parties agree and acknowledge that they each have reviewed and cooperated in the preparation of this Release, that no Release Party should or shall be deemed the drafter of this Release or any provision hereof, and that any rule, presumption, or burden of proof that would construe this Agreement, any ambiguity, or any other matter, against the drafter shall not apply and is waived. The Release Parties are entering into this Release freely, after good-faith, arm's-length negotiation, with the advice of counsel, and in the absence of coercion, duress, and undue influence.

17. Authority: Each person executing this Release or any related documents on behalf of an entity represents and warrants that he or she has the full authority to execute the documents on behalf of the entity each represents and that each has the authority to take appropriate action required or permitted to be taken pursuant to this Release to effectuate its terms.

18. Integration: This Release sets forth the entire understanding and agreement of the Release Parties with respect to the subject matter of this Release. Upon the Execution Date, all prior agreements or understandings between and among EY and Mayer Brown that concern the

subject matter of this Release shall be terminated and deemed null and void and of no further effect whatsoever, and this Release shall supersede and replace in all respects any such prior agreements or understandings.

19. Modification: Neither this Release, nor any provision or term of this Release, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by both Release Parties.

20. Counterparts and Signatures: This Release may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten original signature.

IN WITNESS HEREOF, EY and Mayer Brown have executed this Release signifying their agreement to the foregoing terms.

Ernst & Young LLP

Dated: October 22, 2020

By: 
Ann Cook

Mayer Brown LLP

Dated: _____

By: _____
Andrew S. Marovitz, Partner and
General Counsel

subject matter of this Release shall be terminated and deemed null and void and of no further effect whatsoever, and this Release shall supersede and replace in all respects any such prior agreements or understandings.

19. Modification: Neither this Release, nor any provision or term of this Release, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by both Release Parties.

20. Counterparts and Signatures: This Release may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten original signature.

IN WITNESS HEREOF, EY and Mayer Brown have executed this Release signifying their agreement to the foregoing terms.

Ernst & Young LLP

Dated: _____

By: _____
Ann Cook

Mayer Brown LLP

Dated: October 20, 2020

By: 
Andrew S. Marovitz, Partner and
General Counsel

Exhibit 2

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

CASE NO. CACE10049061 DIVISION 07 JUDGE Jack Tuter

Daniel Newman, et al

Plaintiff(s) / Petitioner(s)

v.

Ernest & Young LLP, et al

Defendant(s) / Respondent(s)

**ORDER WITH PRELIMINARY FINDINGS CONCERNING PROPOSED
SETTLEMENT BETWEEN THE RECEIVER AND MAYER BROWN LLP**

THIS CAUSE, having come to the Court upon the Receiver's Motion for Preliminary Findings Concerning Proposed Settlement Between the Receiver and Mayer Brown LLP (the "Motion"), the Court having considered the Motion and reviewed the proposed Settlement Agreement between the Receiver and Mayer Brown (the "Parties"), the Court hereby GRANTS the Motion. It is hereby ORDERED AND ADJUDGED as follows:

1. All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement, which is attached as Exhibit 1 to the Motion.
2. The Court has reviewed the Motion and the materials submitted with it and understands that the Receiver has initiated, or intends to initiate, a process to obtain the approval of the proposed Settlement by Judge John E. Steele of the U.S. District Court for the Middle District of Florida (the "Federal Court"), which is the court that appointed the Receiver in 2009. The Court understands that the Receiver's motion in the Federal Court includes, or will include, a request that the Federal Court approve the proposed Settlement and enter the proposed Final Settlement Approval & Bar Order.
3. In the Motion, the Parties ask this Court to make certain preliminary findings concerning the proposed Settlement. Specifically, the Motion recognizes that this Court is the trial court presiding over this litigation and therefore that this Court has information and background concerning the progression of this case. The Parties have advised the Court that Mayer Brown's co-defendant in this matter, Ernst & Young LLP, does not object to the proposed Settlement.
4. The Receiver represents that, under the Federal Court order that appointed him, he may not seek this Court's full and final approval of the Settlement unless and until the Federal Court has approved the proposed Settlement. As a result, the findings set forth in this Order are preliminary only. This Order is not a partial judgment in this matter.
5. With these considerations in mind, the Court issues the following preliminary findings with respect to the proposed Settlement:
 - (a) This litigation has been hard-fought and active between the Parties, and the

Court has been asked to resolve numerous disagreements and disputes between the Parties. Among other issues, the Parties litigated many discovery motions and six separate motions for partial summary judgment. Four of those summary judgment motions were decided before the Court stayed this litigation on July 16, 2020. Discovery to date in this case has been quite extensive; the Court understands that by the time the stay was entered, the Parties had taken dozens of depositions in this case, including depositions of many non-parties, and that the Parties and many non-parties had produced nearly two million documents.

(b) The Court is of the view that both the Receiver and Mayer Brown have been represented in this matter by sophisticated, competent, and experienced counsel.

(c) The Court has been informed that the Receiver and Mayer Brown engaged in two formal mediations during the pendency of this case, in an effort to determine if they could resolve this matter. The first occurred in February 2014 with Jonathan B. Marks of Marks ADR in Washington, D.C., and the second occurred in January 2019 with Lawrence Watson of Upchurch, Watson, White & Max in Orlando, Florida. The mediation with Mr. Watson occurred pursuant to this Court's June 7, 2017 scheduling order requiring a mediation process, which order was amended on August 13, 2018 and November 26, 2018 to accommodate extensions of the mediation deadline.

(d) Neither mediation resulted in a settlement. Indeed, the Receiver and Mayer Brown returned to active and vigorous litigation of this matter for more than a year and a half after the conclusion of the 2019 mediation. The Court has been informed that discussions among the Parties and their counsel in 2020 further advanced the Parties' settlement negotiations and resulted in a settlement in principle just before they sought to stay this case on July 15, 2020.

(e) Given the Court's knowledge of this case and its review of the Settlement Agreement, the Court preliminarily finds that the proposed Settlement was reached in good faith and that it does not reflect any collusion or wrongful conduct between the Parties. The Court makes this preliminary finding based on the terms of the proposed Settlement (including the very substantial Settlement Amount), as well as the Court's own observation of the vigorous litigation activities between the Parties.

(f) The Court also preliminarily finds that the proposed Settlement is fair, adequate, and reasonable for the claims the Receiver asserted against Mayer Brown. Among other things, the proposed Settlement Amount is very substantial; both Parties faced risk with continued litigation in this Court; and the costs of further litigation through trial were likely to be quite significant in this complex case.

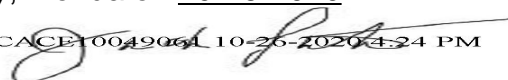
6. The Court understands that the Parties do not intend anything in the Motion or in this Order (including its preliminary findings) to be construed as an admission or concession of (a) any violation of any statute or law by any Party; (b) any fault, liability, or wrongdoing by any Party; or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in this action, or any other proceeding.

7. This Order shall not alter or otherwise affect the stay of proceedings entered by the Court in its July 16, 2020 Order.

8. The Court understands that the Parties will return to this Court for further relief, including entry of the proposed Judgment Order, after completing the process required by the Federal Court to approve the proposed Settlement and to enter the Final Settlement

Approval & Bar Order (and assuming the Federal Court grants such approval and enters such order). To the extent this Court determines at that time that it is appropriate to enter the proposed Judgment Order, such Judgment Order shall supersede this Order, including its preliminary findings.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 10-26-2020.


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Hon. Jack Tuter

CIRCUIT JUDGE

Electronically Signed by Jack Tuter

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