

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 PARTERS 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 CLAIMS PROCESS FOR NON-INVESTOR CREDITORS**

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver (“Receiver”) for Founding Partners Capital Management Company; 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”), files this Motion for Approval of Claims Process for Non-Investor Creditor Claims (“Claims Motion”).

In this Claims Motion, the Receiver respectfully requests that the Court enter an Order: (1) approving the procedure to administer Non-Investor claims set forth below and the proof of claim form attached as **Exhibit A** (“POC Form”); (2) establishing a deadline for potential non-investor

creditor claimants to submit POC Forms to the Receiver; and (3) permitting notice of the deadline by mail (or email where possible), publication on the Receiver's website, and publication in the New York Times at least one day per week for two consecutive weeks. The United States Securities and Exchange Commission ("SEC") does not object to the relief sought in this Motion.

The reason for filing this Motion at this time is that, as previously noted [D.E. 501], the Receiver and Mayer Brown LLP ("Mayer Brown") have agreed to a settlement in principle ("Potential Settlement") of the litigation pending in Broward County, Florida, although the parties are still negotiating terms.¹ As such, the Receiver expects to be in a position to distribute funds to any allowed Non-Investor Creditor (defined below) as well as to the Investors whose claims were previously allowed claims. The Receiver will seek approval of the Settlement Agreement once the parties have agreed to terms, and the Receiver will thereafter seek permission to distribute funds received from Mayer Brown.

FACTUAL BACKGROUND

A. Appointment of Receiver

On April 20, 2009, the SEC filed its complaint ("SEC Action") against Founding Partners Capital Management Company ("FPCMC") and William L. Gunlicks ("Gunlicks"), alleging that FPCMC and Gunlicks had engaged, and were engaging in, a scheme to defraud investors and violate the federal securities laws. [D.E. 1]. In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. After reviewing the SEC's submission, the Court entered an Order Freezing Assets of FPCMC and Gunlicks ("Asset Freeze Order"). The Asset Freeze Order also applies to Founding Partners Stable-Value Fund, L.P., ("Stable-Value"), Founding Partners Stable-Value Fund II, L.P. ("Stable-Value II"), Founding

¹ *Daniel Newman v. Ernst & Young LLP and Mayer Brown, LLP*, Broward County Circuit Court, Case No. 10-49061

Partners Global Fund, Ltd., (“Global Fund”) and Founding Partners Hybrid-Value Fund, L.P. (“Hybrid-Value”) (collectively, “Receivership Funds” and part of the afore defined Receivership Entities).

The Court also entered an order (“Initial Receivership Order”) appointing a receiver (“Initial Receiver”) for the Receivership Entities. [SEC Action, D.E. 9]. The Initial Receiver was removed by Court Order. [SEC Action, D.E. 70]. Daniel S. Newman, Esq. (“Receiver”), was appointed Replacement Receiver by Court Order on May 20, 2009 (“Receivership Order”), which Order supersedes the Initial Receivership Order. [SEC Action, D.E. 73]. The Receivership Order placed the Receiver in charge of the Receivership Entities. *Id.* at 2-3. Under the Receivership Order, the Receiver was granted “full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Founding Partners and the Founding Partners Relief Defendants; marshal and safeguard all of the assets of Founding Partners and the Founding Partners Relief Defendants; and take whatever actions are necessary for the protection of investors.” *Id.* at 1-2. The Receivership Order required the Receiver to, among other things:

- take immediate possession of and administer the assets of the Entities;
- investigate the way the affairs of the Entities were conducted;
- institute such actions and legal proceedings, for the benefit and on behalf of Entities and their investors and other creditors as the Receiver considers necessary;
- assume control of all the Entities’ financial accounts, as necessary; and
- make payments and disbursements from the funds and assets taken into control as necessary in discharging the Receiver’s duties.

Id. at 3-6.

B. Initial Investor Claims Process

In accordance with his powers and obligations under the Receivership Order, the Receiver determined it was in the best interests of the Receivership Entities and the investors to begin an initial claims process for investors only in 2012. [D.E. 338]. As explained in the Receiver's Notice Regarding Creditors ("Creditor Notice"), the initial claims process did not include trade creditors, vendors, and other non-investor creditors ("Non-Investor Creditors"). [D.E. 338].²

The Receiver evaluated the investors' claims ("Investor Claims"), made recommendations to the Court regarding Investor Claims, obtained Court approval of those recommendations, and distributed interests in the FP Designee (as defined in prior filings) to investors. [D.E. 395; 417; 430].

C. Claims Process for Non-Investor Creditors

Given the Potential Settlement, and in accordance with his powers and obligations under the Receivership Order, the Receiver has determined that it is now in the best interests of the Receivership Estate to conduct the Non-Investor Creditor claims process, given the potential impending recovery from Mayer Brown and the desire to expedite distributions from that recovery. This Motion begins that process.

PRIMARY SOURCES OF RECOVERY

Under the Potential Settlement with Mayer Brown, to be discussed in more detail in later filings, the Receiver will obtain funds sufficient to satisfy the anticipated claims of those Non-

² The Receiver advised the Court that Non-Investor Creditors (*e.g.*, lawyers, utilities, etc.) were not included in the initial claims process because they had no right to distribution of interests in the Founding Partners Designee LLC ("FP Designee"). [D.E. 427, ¶2]. The Receiver also noted that he would seek approval to begin a claims process directed solely at these Non-Investor Creditors later, so that the amount of their allowed claims could be determined, and they would be eligible for distributions from later recoveries. *Id.*

The only Non-Investor Creditor claim that was resolved in the initial claims process was submitted by an entity with a relationship to an investor. Given that relationship, the Receiver agreed to litigate the claim in the investor claims process. The Receiver recommended rejecting that Non-Investor Creditor claim and the Court agreed. [D.E. 430].

Investor Creditors who may have valid claims, and also to make a substantial distribution to investors with Approved Claims. The Receiver files this Motion now so that Non-Investor Creditors (along with investors whose claims the Court already adjudicated) are in position to receive distributions as soon as possible if and after the Court approves the Potential Settlement.

The Receiver's arbitration proceeding against Ernst & Young remains pending and is a potential source of recovery in the future, but those claims are not included as part of a settlement with Mayer Brown.

THE PROPOSED CLAIMS PROCESS AND REQUESTED RELIEF

The Receiver seeks to begin this second claims process by requesting that Non-Investor Creditors of the Receivership Entities submit the attached POC Form.³

A. Claims Bar Date

The Receiver seeks entry of an order establishing a filing deadline ("Claims Bar Date") for Non-Investor Creditors with claims against the Receivership Entities. The Receiver proposes that the Claims Bar Date be set 45 days from the entry of an order approving this Motion. This date will allow the Receiver enough time to arrange for and publish the proposed Notice (as defined below) and give Non-Investor Creditors enough time to submit POC Forms to the Receiver. Non-Investor Creditors must submit POC Forms to participate in any distribution of funds. The Receiver proposes that any POC Form submitted after the Claims Bar Date should be disallowed.

The Receiver submits that a Claim Bar Date is appropriate despite the Receiver's desire to permit as many Non-Investor Creditors as possible to participate in these proceedings. A Claim Bar Date provides the Receiver with reasonably prompt certainty as to the total amount of potential claims against the Receivership Entities. Such certainty will facilitate a timely claims resolution

³ The attached POC Form is similar, but not identical, to the POC Form the Court approved for the initial claims process.

and distribution process. The Receiver also requests that the Court order that the claims process contemplated in this Motion be the sole form of recovery for Non-Investor Creditors against the Receivership Entities, and that all Non-Investor Creditors participating in the claims process also return, along with their POC Forms, a release in favor of the Receivership Entities and the Receiver (the “Release”) in the form attached as **Exhibit B**.

B. Notice

The Receiver and his professionals have spent considerable time, effort, and resources examining documents and other data relating to the Receivership Entities. Based on the review of these voluminous documents, the Receiver believes he has identified substantially all Non-Investor Creditors. As to these known potential Non-Investor Creditors, the Receiver possesses last known mailing addresses or email addresses. But some of the last known mailing or email addresses may not be current.

It is also possible that some potential Non-Investor Creditors may be unknown. As such, alternative forms of notice are advisable. Based on the documents reviewed and information gathered to date, Non-Investor Creditors are located throughout the United States. Given the geographically broad area in which Non-Investor Creditors are located and the significant expense associated with publication of notice in each of the states where Non-Investor Creditors may reside, the Receiver proposes publishing the Notice in The New York Times,⁴ a paper with a national and international circulation, at least one day a week for two consecutive weeks and at least 20 days before the Claim Bar Date. The Notice will be in the form attached as **Exhibit C** (“Notice”).⁵

⁴ The cost of publication one day per week for two weeks in The New York Times, for an advertisement the size of the Receiver’s proposed Notice, is about \$9,000.

⁵ The Notice is materially identical to the form of notice approved by the Court for the initial claims process.

The Receiver also proposes publishing the POC Form and Notice on the Receivership website at www.foundingpartners-receivership.com.

The Receiver thus seeks permission to provide notice of this Motion and the Claims Bar Date to known, potential Non-Investor Creditors by mail (or email where possible) and to unknown Non-Investor Creditors by publication in The New York Times and on the Receiver's website.

The Receiver believes that such notice is reasonably calculated to inform all known and unknown Non-Investor Creditors of the Motion and the Claims Bar Date.

C. Procedures to be Used in Administering Claims

The Receiver has developed a proposed procedure and POC Form to efficiently, equitably, and promptly identify potential Non-Investor Creditors and the amount and validity of any claim. The Receiver's proposed procedure will ensure certainty as to the total number and amount of Non-Investor Creditor claims against the Receivership Entities and thus allow for an equitable distribution among Non-Investor Creditors. The Receiver's proposed procedure will also allow the Receiver to obtain information to ensure all Non-Investor Creditor claims can be verified and that if any potential setoffs are appropriate, they can be identified and applied.

The Receiver and his professionals have spent considerable time and resources examining voluminous documents relating to the Receivership Entities, including their financial information. In doing so, the Receiver determined the "Net Invested Capital" methodology was the most equitable way to calculate claim amounts. The Court already approved the "Net Invested Capital" methodology, [D.E. 430], which the Receiver will also use in determining Non-Investor Creditor claim amounts, where applicable.⁶

⁶ By their nature, Non-Investor Creditor claims most likely do not involve "investments" and "returns." In most cases, the Receiver anticipates confirming that invoices and other supporting documents submitted with Non-Investor Creditor claims reflect accurate amounts due and owing. The Receiver does not intend to approve interest or late charges on invoices, consistent with Net Invested Capital treatment of investor claims.

The Receiver reserves the right to object to the validity of any Non-Investor Creditor claim despite the identification of the Non-Investor Creditor for notice purposes. Subject to the Receiver's discretion, to be exercised in an equitable manner and in the best interests of the Receivership Entities, the Receiver may send notice of a deficiency in a submitted POC Form to the submitting non-Investor Creditor. The Receiver proposes that Non-Investor Creditors return an amended POC Form by the later of either: (i) the Claims Bar Date; or (ii) ten business days from the date the Receiver sends the notice of deficiency.

Each POC Form provided to the Receiver must conform substantially to, and must contain all the information sought in, the POC Form approved by the Court. The Receiver reserves the right to reject any altered POC Form or any POC Form that is not filled out completely or is not properly executed by the correct legal entity or individual. Such rejection will be treated as a deficiency and the Non-Investor Creditor will have the time suggested above within which to submit an acceptable POC Form. Each POC Form must be signed by the Non-Investor Creditor or an authorized agent of the Non-Investor Creditor. The Non-Investor Creditor must attest under penalty of perjury that the information, including the information provided by the Receiver, is true and correct. Each POC Form must be legible, written in English, and denominated in United States currency. The submission of a POC Form will subject the Non-Investor Creditor to the jurisdiction of the United States District Court for the Middle District of Florida.

All POC Forms and Releases must be sent by U.S. mail or email before the Claims Bar Date. If sent by U.S. mail, the POC Form must be postmarked on or before the Claims Bar Date and be sent to the following address:

Daniel S. Newman, Receiver
c/o Trish Anzalone
NELSON MULLINS BROAD AND CASSEL
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2100
Miami, FL 33131

If sent by email, the POC Forms and Releases must be submitted to trish.anzalone@nelsonmullins.com, with a copy to chris.cavallo@nelsonmullins.com.

Any timely completed and executed POC Form submitted to the Receiver will be considered allowed if it is established that: (1) the claim arises out of any of the Receivership Entities' activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses align with the books and records available to the Receiver; and (4) no ground exists for denying the claim or setting off amounts claimed.

The Receiver proposes the following schedule for resolution of claims and any objections: (1) the Receiver will inform all claimants of his recommendations concerning claims within ninety (90) days of the Claim Bar Date; (2) any claimant objections to the Receiver's recommendations are due thirty (30) days thereafter; and (3) the Receiver's responses to claimant objections are due thirty (30) days after the deadline for objections. The Court will then rule on objections, as necessary.

All administrative expenses, including attorneys' fees and costs, litigation expenses, experts, and other administrative costs, will be paid by the Receivership Entities. These administrative expenses will be paid or reserved before any distribution to Non-Investor Creditors is made. Administrative expenses may also include but are not limited to: (1) expenses for

publishing notice; and (2) the retention of one or more consultants to help analyze the validity of claims. No previous request for this relief has been made to this or any other Court.

MEMORANDUM OF LAW IN SUPPORT OF RELIEF

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Sec. Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Fin. Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls within those powers. In receivership proceedings such as this, “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, *Clark on Receivers* § 646, at 1132 (3rd Ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized “under a general order of the appointing court [to file their] claim with the receiver.” *Id.* The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.* “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Id.* § 651, at 1142.

Along with approving a proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *Id.* § 652, at 1142 (*citing Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); *U.S. Commodity Futures Trading Comm'n v. Barki, LLC*, 2009 WL 2473687, *1 (W.D. N.C. 2009) (approving a receivership claims

process and a claims bar date no earlier than 30 days after notice to investors). Courts have found that an order limiting the time within which claims must be presented is necessary to “lay the foundation for the court to order payments to creditors and distribution to those entitled to receive,” *Id.* § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143; *see also SEC v. Tanner*, 2006 WL 897462, *1 (D. Kan. 2006) (approving receiver’s website notice and email notice to investors of a claims process and claims bar date).

Under the terms of the Receivership Order, the Receiver, among other things, is authorized, empowered, and directed to (a) administer the assets of the Receivership Entities and (b) determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entities. [D.E. 73]. In exercising his duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of the Receivership Entities, that the claims administration procedures, Notice, Claims Bar Date, Release, and POC Form as set forth here and in the attached exhibits be approved by this Court.

CONCLUSION

For these reasons, Daniel S. Newman, as Receiver, requests that the Court enter an order: (1) approving the claims administration procedure set forth above; (2) approving the POC Form attached as Ex. A and Release attached as Ex. B; (3) establishing the date 45 days from the date of the order approving this Motion as the Claims Bar Date; and (4) permitting notice of the Claims Bar Date and the information in this Motion in the form of Notice attached as Ex. C by (a) U.S. mail or, where available, email, (b) publication in The New York Times at least one day a week for two consecutive weeks, and (c) on the Receiver’s website.

Date: September 3, 2020.

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2100
Miami, FL 33131
Telephone: 305.373.9400
Facsimile: 305.995.9443

By: /s/ Jonathan Etra
Jonathan Etra, Esq.
Fla. Bar No. 0686905
Christopher Cavallo, Esq.
Fla. Bar No. 0092305
Counsel for Receiver

CERTIFICATE OF CONFERRAL

The Receiver hereby certifies that counsel for the SEC does not object to the relief sought in this Motion.

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

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF. I also certify that the above is being served this day on all counsel and parties of record through transmission of notices of electronic filing generated by CM/ECF or in some other authorized manner for those counsel who cannot receive electronically notices of electronic filing.

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

**PROOF OF CLAIM IS TO BE FILED WITH RECEIVER – DO NOT FILE WITH
COURT**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

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FOUNDING PARTNERS CAPITAL MANAGEMENT,
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS 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.

**NON-INVESTOR CREDITOR
PROOF OF CLAIM FORM**

<p>CLAIMANT CONTACT INFORMATION:</p> <p>Name of Claimant: _____</p> <p>Name of Person Submitting Form and Relationship to Claimant (if different from Claimant): _____</p> <p>Name and Address Where Notices Should be Sent: _____ _____ _____</p> <p>Telephone No.: _____</p> <p>Email Address: _____</p> <p>Fax No.: _____</p>	<p>CLAIM STATUS:</p> <p><input type="checkbox"/> Check box if you are aware that anyone else has filed a Proof of Claim Form relating to your Claim. <i>(Attach statement giving particulars.)</i></p> <p><input type="checkbox"/> Check box if you have never received any notices from the Receiver.</p> <p><input type="checkbox"/> Check box if the address entered on this form differs from the address on the envelope sent to you by the Receiver.</p> <p><input type="checkbox"/> Check here if this Proof of Claim Form: <input type="checkbox"/> amends <input type="checkbox"/> replaces <input type="checkbox"/> supplements a previously filed Proof of Claim Form, dated: _____.</p>
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<p>SEND PROOF OF CLAIM FORM TO:</p> <p>Daniel S. Newman, Receiver Nelson Mullins Broad and Cassel Attention: Trish Anzalone</p> <p>MAILING ADDRESS:</p> <p>2 S. Biscayne Blvd., Suite 2100 Miami, FL 33131</p> <p>EMAIL ADDRESS:</p> <p>trish.anzalone@nelsonmullins.com</p>	<p>THIS SPACE IS FOR RECEIVER'S USE ONLY:</p> <p>Claim No.: _____</p>
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INSTRUCTIONS

**PLEASE READ CAREFULLY – FAILURE TO FOLLOW ALL INSTRUCTIONS MAY
JEOPARDIZE YOUR ENTIRE CLAIM**

1. Where to File Proof of Claim.

This form must be completed in accordance with the instructions below and timely delivered to Daniel S. Newman, Receiver, Attention Trish Anzalone, Nelson Mullins Broad and Cassel, 2 S. Biscayne Blvd., Suite 2100, Miami, FL 33131, the Court-appointed Receiver over Founding Partners Capital Management Company; 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”).

2. Deadline for Filing Proof of Claim.

The deadline for delivering this Proof of Claim is [_____], 2020. Any Proof of Claim not delivered or postmarked to the Receiver on or before [_____], 2020 will be considered untimely and may result in disallowance of the Claim.

3. Who Should File a Claim.

Any non-investor creditor (*i.e.* a creditor of the Receivership Entities who did not invest in the Receivership Entities and did not participate in the prior Court-approved claims process) who believes they are owed any money by any of the Receivership Entities, which claim arose prior to April 20, 2009 (“Claimant”).

4. Information and Documentation to Be Provided by Claimant.

Each item of information and documentation requested in this Proof of Claim Form will be used by the Receiver in determining each Claimant’s eligibility in any distribution of Receivership Property, and in calculating the appropriate amount of each allowed claim, subject to the Court’s approval. Please be as detailed and complete as possible with regard to submissions and documents attached to this form, as it may affect both your eligibility to participate and the amount of your allowed claim. **Do not send original documents. *Providing false, misleading or incomplete information or incomplete documentation will delay any disbursement made from this Receivership Estate and could jeopardize your distribution altogether.***

5. Claimant Contact Information.

Complete the Claimant Contact Information section on the first page of this Proof of Claim Form, giving the name, address, telephone number, e-mail address and fax number of the Claimant to whom the Receivership Entity allegedly owes money or property.

6. Claim Status.

If you have never received any notices from the Receiver about this case, and/or if the address differs from the address on the envelope sent to you by the Receiver, check the appropriate boxes on the form on the first page. If this Proof of Claim Form changes, replaces or supplements a Proof of Claim previously filed by you, check the appropriate box on the form and provide the date the previous Proof of Claim Form was filed. Furthermore, check the appropriate box if anyone else has filed a Proof of Claim Form relating to your Claim, and in an attached statement provide particulars such as who filed the related Proof of Claim Form, its date and amount.

7. Supporting Documents Relating to Claim

Please attach to this Proof of Claim Form all documents that show that a Receivership Entity owes the obligation claimed. If documents are not available, attach an explanation as to why they are not available. Failure to attach supporting documents could delay the processing of your claim and may result in the partial or full denial of your claim.

Please make sure that you sequentially label all the documents that you produce to the Receiver in connection with your Claim, to ensure that both you and the Receiver have the same record of documents received, and in order to maintain integrity and order among the documents the Receiver receives among numerous documents. The Receiver recommends that you label on the bottom right hand corner of each document using your or your entities initials or name and beginning with the number 001 (e.g. for John Q. Smith, the first page of the production of documents would be labeled "JQS001," the second page "JQS002" and so on). Labeling by hand is acceptable.

DO NOT SEND ORIGINAL DOCUMENTS AT THIS TIME – ONLY SEND COPIES OF DOCUMENTS.

8. Questions Seeking Additional Information.

Please answer the questions to the best of your ability. This will assist the Receiver with his investigation efforts and may lead to the recovery of additional assets.

9. No Blank Answers.

If a particular item does not apply to you specifically, write "not applicable." If you do not know the answer to a particular item, write "not known." ***Do not leave a question blank. Use additional pages as necessary to provide complete responses.***

10. Signature – Legal Authority to Submit Claim.

The Proof of Claim Form must be signed and dated by the Claimant, or a duly authorized officer or legal representative in the space provided on the final page. To the extent that the signatory is authorized pursuant to a power of attorney or court appointment, documentation of such authority must be provided.

11. Independent Verification of Claims – Requests for Supplemental Information.

All Claims are subject to verification by the Receiver and any professionals and experts he retains. It is important to provide complete and accurate information to facilitate this effort. Claimants may be asked to supply additional information to complete this process. Claims will not be considered for payment until they have been verified.

12. Communications with Receiver.

Any questions about this form or process (including supporting documentation) should be made by e-mail to trish.anzalone@nelsonmullins.com and chris.cavallo@nelsonmullins.com, or in writing to the Receiver's office, Daniel S. Newman, Receiver, Nelson Mullins Broad and Cassel, 2 S. Biscayne Blvd., Suite 2100, Miami, FL 33131. If you have information that you believe may be helpful to the Receiver, the SEC or any other law enforcement agencies, we encourage you to contact the Receiver's counsel at the above e-mail addresses.

13. Certification of Truthfulness.

Each Person completing a Proof of Claim Form is required to certify, under penalty of perjury, that all the information contained in this Proof of Claim Form is correct, to the best of such Person's knowledge, and that such Person is authorized by the Claimant to submit the Proof of Claim Form on the Claimant's behalf.

14. Requests for Additional Information or Documentation.

The Receiver may require additional information or documentation. By submitting a Proof of Claim Form, each Claimant agrees to cooperate with the Receiver in these requests and provide all requested documentation or information. *Failure to provide all such requested information or documentation may result in delays in the claims process or in the partial or complete disqualification of your claim.*

15. Exclusive Jurisdiction

By submitting the Proof of Claim, Claimants acknowledge they shall submit themselves to the exclusive jurisdiction of the U.S. District Court for the Middle District of Florida for all issues pertaining to Proof of Claim and the resolution of same.

PROOF OF CLAIM

I. Identify the Claim

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

No Yes _____
If yes, from whom?

3. Does this claim amend one already filed?

No Yes _____
If yes, when was the original filed?

4. Do you know if anyone else has filed a Proof of Claim for this claim?

No Yes _____
If yes, who made the earlier filing?

II. Give Information About the Claim as of the Date the Case Was Filed

5. How much is the claim?

\$ _____

Does this amount include interest or other charges?

No Yes

If yes, attach statement itemizing interest, fees, expenses, or other charges.

6. Which Receivership Entity is the debtor for your claim?

7. What is the basis for the claim?

(Examples: goods sold, money loaned, lease, services performed, etc.)

Attach copies of all documents supporting the claim.

8. Is all or part of the claim secured?

No

Yes

If the claim is secured by a lien on property:

Real Estate

Motor Vehicle

Other (describe)

Basis for perfection

\$ _____
Value of property

\$ _____
Amount of claim that is secured

\$ _____
Amount of claim that is unsecured

\$ _____
Amount necessary to cure any default as of the date of the Receivership (August 23, 2019)

% _____
Annual interest rate (fixed ___ or variable ___)

9. Is this claim based on a lease or other contract?

No Yes

If yes, attach the executed contract and describe what, if any, amount is necessary to cure any default as of the date of the Receivership (August 23, 2019)

10. Is this claim subject to a right of setoff?

No Yes If yes, please identify the property

Certification of Truthfulness

Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby certify, under penalty of perjury, and pursuant, that all of the information provided in this Proof of Claim Form is true and correct and that the undersigned is authorized to make this Claim. By initialing each item below, I specifically certify that:

		<u>Initial</u>
1.	I have read the Instructions to the Proof of Claim Form prior to completing the Proof of Claim Form.	_____
2.	When calculating the amount of the claim, I gave the Receivership Entities credit for any payments made to me.	_____
3.	I have examined the information provided in this Proof of Claim Form and have a reasonable belief that the information is true and correct.	_____
4.	I acknowledge a duty on my part to supplement or amend this Proof of Claim Form to disclose a material change with respect to any answer or information provided in connection herewith.	_____

Signed, under penalty of perjury, this ____ day of _____, 20__.

Signature: _____

Print Name: _____

Name of Claimant: _____

Relationship to Claimant (Title): _____

[Sign and print name, the name of the Claimant on whose behalf you are submitting this Claim and your relationship to the Claimant. If you are signing on behalf of the Claimant, state the basis for your authorization to sign on behalf of claimant, and attach any power of attorney or other relevant authorization.]

RELEASE OF CLAIMS (by Non-Investor Claimants)

The undersigned person (the "Affiant"), in consideration of:

the participation in the court-approved claims process of which this Release of Claims is an integral part,

on behalf of:

such Affiant, and his/her/its officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasors"),

hereby releases and discharges:

Founding Partners Capital Management Company; 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. (the "Receivership Entities"), and Daniel S. Newman, individually and in his capacity as receiver for the Receivership Entities (the "Receiver"), and each of their respective officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasees"),

from:

all liabilities arising from any and all claims, demands, controversies, actions, causes of action whether asserted or unasserted, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, proceedings, agreements, promises, variances, trespasses, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, liquidated or unliquidated, pending or not pending, disclosed or not disclosed, whether directly, representatively, derivatively or in any other capacity (collectively, the "Claims"),

which the Releasors ever had, now have or hereafter can, shall or may have for, against the

Releasees, upon or by reason of:

anything related to the Receivership Entities, and any claims in any way related to any actions or omissions of the Receiver relating in any manner to his role as the Receiver for the Receivership Entities (collectively, the "Released Claims"),

The Releasors shall not commence, prosecute, or assert any action, complaint, demand, cause of action, arbitration or other proceeding of any kind relating to, arising out of or involving in any way the Released Claims including, without limitation, any action for contribution, indemnity or otherwise, against or affecting any of the Releasees or any of their property, except for the purpose of enforcing this or any other Release executed in connection with the court appointed claims process.

In the event that any Releasor breaches the foregoing paragraphs, such Releasor shall indemnify and hold harmless each Releasee for any loss or damages, however suffered, caused by such breach, including, without limitation, costs, expenses and reasonable attorneys' fees, including, without limitation, attorneys' fees incurred in the course of enforcement of this indemnification provision.

The Releasors represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim released hereby that they have had, now have or may have against Releasees or any portion thereof or interest therein.

This Release may be modified only by a writing duly executed by the parties hereto.

This Release shall be governed by and interpreted in accordance with the laws of the State of Florida, without giving effect to any conflicts of laws rule or principle that might require the application of the laws of another jurisdiction.

Any action relating to this release or breach thereof falls within the exclusive jurisdiction of the United States District Court for the Middle District of Florida, and Affiant submits to such jurisdiction.

IN WITNESS WHEREOF, the Affiant has set his or her or its hand this ____ day of _____, 20__.

(Name of Affiant):

(Signature):

By: _____

(Position):

[Individual Acknowledgement]

STATE OF _____)
 : ss.:
COUNTY OF _____)

On _____, 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual executed the instrument.

Notary Public

[Corporate Acknowledgement]

STATE OF _____)
 : ss.:
COUNTY OF _____)

On _____, 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as _____ of _____, and that by his/her signature on the instrument, the individual or entity upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual taking acknowledgment

Notary Public

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 PARTERS 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.

NOTICE TO POTENTIAL NON-INVESTOR CREDITORS

TO: All non-investor creditors who may have a claim against Founding Partners Capital Management Company; 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. (the "Receivership Entities"), which arose prior to April 20, 2009.

Non-investor creditors are those who: (i) did not invest with the Receivership Entities; and (ii) did not participate in the prior Court-approved claims process.

All potential non-investor creditors who seek to be eligible for recoveries from the Receivership Entities must complete, sign and return the Non-Investor Creditor Proof of Claim Form and Release. The Proof of Claim Form and Release must be returned to Daniel S. Newman, Receiver, c/o Trish Anzalone, Nelson Mullins Broad and Cassel, 2 S. Biscayne Blvd., Suite 2100, Miami, FL 33131.

Copies of the Proof of Claim Form and Release are available from the Receiver by downloading copies from the receivership website at www.foundingpartners-receivership.com. **Do not file the Proof of Claim and Release with the Court. The Proof of Claim Form and Release must be sent to the Receiver, postmarked on or before _____, 2020. Failure to file a claim timely shall result in a waiver of any rights to participate in any distribution of funds through the Receivership.**

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 PARTERS 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.

**ORDER APPROVING RECEIVER'S MOTION
FOR APPROVAL OF CLAIMS PROCESS FOR NON-INVESTOR CREDITORS**

This matter comes before the Court on the Receiver's Motion for Approval of Claims Process for Non-Investor Creditors ("Motion"), filed on September 3, 2020, [D.E. ____]. The Securities and Exchange Commission does not object to the relief sought by the Receiver in the Motion.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion is GRANTED;
2. The Court approves the claims administration procedure and timelines set forth in the Motion, including the POC Form and Release;

3. The Court hereby sets a claims bar date of _____, which is 45 days from the Court's approval of this Motion;
4. The Receiver shall provide notice to non-investor creditors in the form of Notice attached to the Motion, by (a) U.S. mail or, where available, email, (b) publication in The New York Times at least one day a week for two consecutive weeks, and (c) on the Receiver's website;

DONE AND ORDERED in Chambers at Fort Myers, Florida on _____, 2020.

THE HONORABLE JOHN STEELE
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record