

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY,
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

**MOTION FOR COURT APPROVAL OF THE RECEIVER'S RECOMMENDATIONS
CONCERNING CLAIMS AND PROPOSED OBJECTION SCHEDULE**

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

The Securities and Exchange Commission (“SEC”) does not oppose the relief sought herein.

I. BRIEF SUMMARY OF REQUESTED RELIEF

The Receiver recommends that the Court, following notice, opportunity for objections, and a hearing, enter an order approving the Receiver’s recommendations concerning two categories of claims: (1) claims from non-investor creditors received in the Court-approved claims process [D.E. 503] (“Creditor Claims” submitted by “Creditor Claimants”); and (2) late claims received from certain investors who, despite prior notice approved by the Court and the passage of time, claim they were not aware of the original Court-approved investor claims process [D.E. 349] (“Investor Claims” submitted by “Investor Claimants”).¹

Attached to this Motion as **Exhibit A** is Schedule A, which contains information concerning the Claimants and their Claims. Schedule A includes the Claimants’ proposed allowed amounts that will govern all distributions (*e.g.*, distributions from the proposed settlement with Mayer Brown). The Receiver seeks a ruling from the Court allowing the Claims listed (by Claimant number) in Schedule A, in the amount reflected in column 8 (“Allowed Amounts”). Where the Allowed Amounts in column 8 of Schedule A are left blank, the Receiver requests alternative relief regarding those Claims, described in column 9 of Schedule A (“Alternative Relief”).

II. CLAIMS RECEIVED

As noted above, this Motion concerns two types of claims—Creditor Claims and Investors Claims.

¹ “Creditor Claimants” and “Investor Claimants” are at times referred to collectively as “Claimants.” “Creditor Claims” and “Investor Claims” are at times collectively referred to as “Claims.”

A. Creditor Claims

Pursuant to this Court's order approving the proposed non-investor claims process, dated September 9, 2020 [D.E. 503], all Proof of Claim Forms were to be completed and returned to the Receiver's office no later than October 26, 2020. [*Id.* at 2].

The Receiver received 3 Creditor Claims. The Receiver's professionals reviewed each Creditor Claim, supporting documentation provided by Creditor Claimants, and any documents in the Receivership Entities' possession relating to the Creditor Claims. After that review, the Receiver has been able to verify and recommend for approval all 3 of the Creditor Claims.

B. Investor Claims

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

The Receiver received 3 Investor Claims from Investor Claimants who have sworn under oath that they were not aware of the original investor claims process. These 3 Investor Claimants have asked the Receiver to consider their Investor Claims and make a recommendation to the Court as to whether they should be accepted. The Receiver's position in the claims process is, and has been, that equity dictates late-filed claims should be approved if they are otherwise free and clear of any other objectionable characteristics. [D.E. 395 at 9]. The Receiver's professionals reviewed each Investor Claim, supporting documentation provided by Investor Claimants, and any documents in the Receivership Entities' possession relating to the Investor Claims. The Receiver also obtained sworn declarations from the Investor Claimants that they were unaware

of the original claims process. Given the review, the sworn declarations, and the guiding principles of equity, the Receiver recommends for approval all 3 of the Investor Claims.²

III. RECEIVER'S RECOMMENDATIONS

Schedule A identifies, by Claimant number,³ the 3 Creditor Claimants and 3 Investor Claimant who filed Proof of Claim Forms. It also includes the applicable Receivership Fund, the amount claimed in the Proof of Claim Form, the Receiver's recommendation that each Claim be approved, and the proposed Allowed Amount or Alternative Relief for each Claim.

Claimant Nos. 1 and 2 on Schedule A are Creditor Claimants who submitted claims for \$44,620.91 and \$23,276.90, respectively. Claimants No. 1 and 2 provided services to the Receivership Entities pre-Receivership. The Receiver recommends approval of these Creditor Claims in full, having confirmed the claimed amounts are due and owing through the analysis described above.

Claimant No. 3 on Schedule A is a Creditor Claimant who submitted a claim for \$1,760.40. Claimant No. 3 provided services to both Receivers in this action from May to July 2009.⁴ The Receiver recommends approval of this Creditor Claim in full, having confirmed the claimed amounts are due and owing through the analysis described above. Given that this is a Receivership expense incurred after the first Receiver was appointed, the Receiver requests

² The Investor Claimants have acknowledged in writing that they agree to be included in the definition of "Approved Claimants" or "Unapproved Claimants" as those terms are defined in the proposed Settlement Agreement between the Receiver and Mayer Brown, and that they will be bound by the Bar Order, which is still subject to the Court's approval, in connection with the proposed Settlement Agreement. *See Exhibit B* (redacted).

³ The Receiver has generally sought to keep the identities of investors and creditors confidential. As such, the Receiver has replaced the names of Claimants on Schedule A with corresponding Claimant Numbers.

⁴ The first Receiver, Leyza Blanco, was replaced by the current Receiver, Daniel S. Newman, on May 20, 2009. Claimant No. 3 also seeks the return of certain minor property from the Receivership Entities' offices, now allegedly held by the Receiver.

Court approval to handle it outside the claims process and pay this expense in full, as reflected in “Alternative Relief,” column 9 of Schedule A.

Claimant No. 4 on Schedule A, a family trust, is an Investor Claimant who submitted a claim for \$500,000.00. The Receiver, guided by principles of equity, recommends approval of this late-filed Investor Claim in full, having confirmed through the analysis described above that the Investor Claimant made an investment in the Receivership Funds and did not receive return of any of the invested funds.

Claimant No. 5 on Schedule A, an individual, is an Investor Claimant who submitted a claim for \$500,000.00. The Receiver, guided by principles of equity, recommends approval of this late-filed Investor Claim in full, having confirmed through the analysis described above that the Investor Claimant made an investment in the Receivership Funds and did not receive return of any of the invested funds.

Claimant No. 6 on Schedule A, a family trust, is an Investor Claimant who submitted a claim for \$50,000.00. The Receiver, guided by principles of equity, recommends approval of this late-filed Investor Claim in full, having confirmed through the analysis described above that the Investor Claimant made an investment in the Receivership Funds and did not receive return of any of the invested funds.

IV. PROPOSED OBJECTION PROCEDURE

By submitting executed Proof of Claim Forms to the Receiver, all Claimants have submitted to the exclusive jurisdiction of this Court for the purpose of resolving their claims, and therefore all necessary procedures and discovery can be set and conducted by this Court.

Alexander v. Hillman, 296 U.S. 222, 238-239 (1935).

The Receiver proposes that sufficient notice will be provided to Claimants by emailing to

them (using the most recent contact information available to the Receiver), a copy of this Motion, the proposed Order, their applicable Claim numbers, and a written notice stating that deadlines for objections will be set by the Court.

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

The Receiver recommends that the Court adopt the following objection procedure (“Objection Procedure”):

First, Claimants and any other interested parties will have thirty (30) days from the entry of the Court’s preliminary order approving this Objection Procedure to respond in writing to the Receiver’s recommendations. Objections must be filed with the Court and sent to the Receiver at his office, care of Christopher Cavallo, Esq. and Trish Anzalone, Nelson Mullins Broad and Cassel, 2 South Biscayne Boulevard, Suite 2100, Miami, Florida 33131 to be received no later than thirty (30) days from the entry of the Court’s order approving this Objection Procedure. If no objections are submitted within the time frame provided, the Receiver’s recommendations will be deemed sustained with prejudice with respect to each Claimant, subject to Court approval, and the right of anyone to object will be deemed irrevocably waived.

Second, the Receiver shall submit responses to timely-filed objections within thirty (30) days from the final due date for objections.

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

V. SUPPORT FOR PROPOSED PROCEDURE AND RECOMMENDATIONS

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

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

By filing their claims with the Receiver, Claimants have submitted themselves to the jurisdiction of this Court. *Alexander v. Hillman*, 296 U.S. 222, 238 (1935). The Receiver believes these summary proceedings strike a proper balance between distributing the assets of

the Receivership efficiently and providing all Claimants an opportunity to be heard on the distribution of those funds. The Claimants' due process rights are met by providing all Claimants notice and an opportunity to object to the Receiver's recommendations.

VI. CONCLUSION

The Receiver requests that this Court enter the proposed Objection Procedure Order, attached as **Exhibit C**, establishing the Objection Procedure recommended in Section IV above.

The Receiver respectfully requests that this Court, after the time for objections has passed, enter an order approving the Receiver's recommendations concerning claims described in this Motion and the attached Schedule A, and grant any other relief it determines is just and proper.

Dated: January 25, 2021

NELSON MULLINS BROAD AND CASSEL
Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 S. Biscayne Blvd.
Miami, FL 33131
Telephone: 305.373.9400
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By: Jonathan Etra
Jonathan Etra
Florida Bar No. 0686905
Christopher Cavallo
Florida Bar No. 0092305

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, 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>
<p>Stuart Z. Grossman Rachel W. Furst Grossman Roth Yaffa Cohen 2525 Ponce de Leon Blvd., Suite 1150 Coral Gables, Florida 33134 Tel: 305.442.8666 Fax: 305.285.1668 <i>Co-counsel for the Receiver</i></p>	

Schedule A
Receiver's Proposed Allowed Amounts

1	2	3	4	5	6	7	8	9
Claimant No.	Category	Fund Invested In	Received Release	Basis for Objection	Amount claimed on POC ¹	Amount per Receivership Records	Proposed Allowed Amount	Proposed Alternative Relief
1	Creditor	N/A	Yes	N/A	\$ 44,620.91	\$ 44,620.91	\$ 44,620.91	
2	Creditor	N/A	Yes	N/A	\$ 23,276.90	\$ 23,276.90	\$ 23,276.90	
3	Creditor	N/A	Yes	N/A	\$ 1,760.40	\$ 1,760.40		\$ 1,760.40 ²
4	Investor	Stable Value Fund	Yes	N/A	\$ 500,000	\$ 500,000	\$ 500,000	
5	Investor	Stable Value Fund	Yes	N/A	\$ 500,000	\$ 500,000	\$ 500,000	
6	Investor	Stable Value Fund	Yes	N/A	\$ 50,000	\$ 50,000	\$ 50,000	

Note 1 Per Schedule A on each Claimant's Proof of Claim Form.

Note 2 This claim is for an expense incurred by the Receivership, after the Receiver was appointed, and should be paid outside of the claims process.

I, _____, on January 19, 2021, Trustee of the _____ trust, agree that the _____ Trust be included in the definition of “Approved Claimants” or “Unapproved Claimants” as those terms are defined in the proposed Settlement Agreement between the Receiver and Mayer Brown.

Among other things, I acknowledge the Trust will subject to the proposed Bar Order the Receiver has requested the Court to enter.

I also acknowledge the proposed amount of \$50,000

Trustee
The _____ Trust

Chris Cavallo

From:
Sent: Thursday, January 21, 2021 1:26 PM
To: Chris Cavallo
Subject: Re: FW: SEC v. Founding Partners

I agree and confirm that I will fall within the definition of " Approved Claimant or Unapproved Claimant" and will be bound by the bar order.

On Thu, Jan 21, 2021 at 1:25 PM Chris Cavallo <chris.cavallo@nelsonmullins.com> wrote:

From: Chris Cavallo
Sent: Thursday, January 21, 2021 9:22 AM
To:
Cc: Trish Anzalone <Trish.Anzalone@nelsonmullins.com>
Subject: RE: SEC v. Founding Partners

Following up on this. Please confirm your agreement and acknowledgment that you fall within the definition of "Approved Claimants" or "Unapproved Claimants," and that you will be bound by the Bar Order to be entered by the Court, as explained in my below email. Your response to this email confirming same is sufficient.

Thanks.

REDACTED

Chris Cavallo

From:
Sent: Thursday, January 21, 2021 4:47 PM
To: Chris Cavallo
Subject: RE:

Chris, to add a little more context to my email below, my client agrees to be bound by being included in the definition of Approved Claimant, Unapproved Claimant, and the Bar Order generally. The reservation, however, merely has to do with having a right to be heard at Court.

PACK LAW

From:
Sent: Thursday, January 21, 2021 3:59 PM
To: 'Chris Cavallo' <chris.cavallo@nelsonmullins.com>
Subject: RE:

Thanks Chris – we'll work on that ASAP.

My client can agree that the Trust agrees to be included in the definition of Approved Claimants but must reserve its rights regarding being an Unapproved Claimant. We understand the Claim must **eventually** be one or the other, but cannot "agree" to that today.

PACK LAW

From: Chris Cavallo <chris.cavallo@nelsonmullins.com>
Sent: Thursday, January 21, 2021 3:58 PM
To:
Subject: RE:

One other thing. I am told that we did not get back an investor release (a document included in the claims package that we sent you). Please send that too.

-Chris

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY,
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

**ORDER APPROVING RECEIVER'S
RECOMMENDATION FOR OBJECTION PROCEDURE**

This matter comes before the Court on the Receiver's Motion for Court Approval of the Receiver's Recommendations Concerning Claims and Proposed Objection Schedule ("Motion"), filed on January 25, 2021, ECF No. [__]. 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 objection procedure proposed by the Receiver in the Motion, ECF No. [__], is **GRANTED**;
2. The Court approves the Receiver's recommended objection procedure as follows:

- a. Claimants shall have 30 days from the entry of this Order to respond in writing to the Receiver's Motion. Claimants shall both file their objections with the Court and serve their objections to the Receiver by email, care of Christopher Cavallo, Esq. (chris.cavallo@nelsonmullins.com) and Trish Anzalone (trish.anzalone@nelsonmullins.com).
- b. If a Claimant does not object within the time frame provided, the Receiver's recommendations will be deemed sustained with prejudice as to that Claimant, and the right of that Claimant to object will be deemed irrevocably waived.
- c. Within 30 days of the deadline for Claimant objections (*i.e.*, by _____, 2021), the Receiver shall file his responses to timely filed Claimant objections.
- d. To the extent necessary, the Court may set a hearing for a date after the Receiver's deadline to file responses.
- e. The Receiver shall serve a copy of this Order on each Claimant by mail or email, using the most recent contact information available to him, and shall post a copy of this Order on the Receivership website.

DONE AND ORDERED in Chambers at Fort Myers, Florida on this ____ day of _____, 2021.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record