

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No: 2:09-cv-229-FtM-29CM

FOUNDING PARTNERS CAPITAL  
MANAGEMENT, CO., FOUNDING  
PARTNERS STABLE-VALUE FUND,  
LP, FOUNDING PARTNERS STABLE-  
VALUE FUND II, LP, FOUNDING  
PARTNERS GLOBAL FUND, LTD,  
FOUNDING PARTNERS HYBRID-  
VALUE FUND, LP, PAMELA L  
GUNLICKS and REGIONS BANK,

Defendants.

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**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came before the Court and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that pursuant to the Court's Order entered on August 4, 2014, Plaintiff's Motion for Entry of Final Judgment of Permanent Injunction and Other Relief (Doc. #432) is GRANTED and a separate Final Judgment of Permanent Injunction and Other Relief Against Defendant Founding Partners Capital Management Co. is entered. The claims for disgorgement and prejudgment interest against the Relief 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 are dismissed. Judgment is entered in favor of Securities and Exchange Commission and against Founding Partners Capital

Management Co. by incorporating the contents of the Order, and the attached copy of the separate Final Judgment of Permanent Injunction and Other Relief Against Defendant Founding Partners Capital Management Co.

August 20, 2014

SHERYL L. LOESCH, CLERK

s/S. Blake, Deputy Clerk

**CIVIL APPEALS JURISDICTION CHECKLIST**

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
  - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
  - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
  - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
  - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
  - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
  - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
  - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
  - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
  - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
  - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

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LP, FOUNDING PARTNERS  
STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL  
FUND, LTD, FOUNDING PARTNERS  
HYBRID-VALUE FUND, LP,  
PAMELA L GUNLICKS, and  
REGIONS BANK,

Defendants.

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**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST  
DEFENDANT FOUNDING PARTNERS CAPITAL MANAGEMENT CO.**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint (Doc. #1) against, among others, Defendant Founding Partners Capital Management Co. ("Founding Partners"). In its Complaint, the Commission sought, among other relief against Founding Partners, a permanent injunction to prohibit violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; Sections 206(1) and 206(2) of the Investment Advisors Act of 1940 ("Advisors Act") [15

U.S.C. §§ 80b-6(1) and (2)]; and Section 206(4) of the Advisors Act and Advisors Act Rule 206(4)-8 [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8]; disgorgement, prejudgment interest and a civil money penalty.

The Securities and Exchange Commission filed a Notice of Filing Consent of Defendant Founding Partners Capital Management Co. and Motion for Entry of Final Judgment of Permanent Injunction and Other Relief (Doc. #432) on July 14, 2014. Founding Partners, by the attached Consent, has entered a general appearance and consented to the Court's jurisdiction over it and the subject matter of this action, has consented to the entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction which Founding Partners admits), waived findings of fact and conclusions of law; and waived any right to appear from this Final Judgment. This Court having accepted such Consent by separate Order, and finding jurisdiction over Founding Partners and the subject-matter of this action:

I.

**Violations Of Section 17(A) Of The Securities Act Of 1933**

**IT IS ORDERED AND ADJUDGED** that Founding Partners and its officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service

or otherwise, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (1) any investment strategy or investment in securities, (2) the prospects for success of any product or company, (3) the use of investor funds, and (4) compensation to any person.

II.

VIOLETIONS OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF  
1934 AND EXCHANGE ACT RULE 10b-5

**IT IS FURTHER ORDERED AND ADJUDGED** that Founding Partners and its officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or

misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (1) any investment strategy or investment in securities, (2) the prospects for success of any product or company, (3) the use of investor funds, and (4) compensation to any person.

**III.**

**Violations Of Sections 206(1) And (2) Of The Investment Advisers Act Of 1940**

**IT IS FURTHER ORDERED AND ADJUDGED** that Founding Partners and its officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any clients or prospective clients; or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any clients or prospective clients

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (1) any investment strategy or investment in securities, (2) the prospects for success of any product or company, (3) the use of investor funds, and (4) compensation to any person.

**IV.**

**Section 206(4) And Rule 206(4)-8 Of The Advisers Act**

**IT IS FURTHER ORDERED AND ADJUDGED** that Founding Partners and its officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8, directly or indirectly, by using the mails or any means or instrumentality of interstate commerce, while engaged in the business of advising a pooled investment vehicle for compensation as to the advisability of investing in, purchasing or selling securities: (a) to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they

were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or (b) otherwise engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative, with respect to any investor or prospective investor in the pooled investment vehicle.

**V.**

**Commission's Cease-And-Desist Order**

**IT IS FURTHER ORDERED AND ADJUDGED** that Founding Partners and its officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are ordered pursuant to Section 20(c) of the Securities Act to comply with the Commission's December 3, 2007 Administrative Order requiring Founding Partners to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**VI.**

**Disgorgement, Prejudgment Interest, And Civil Penalty**

**IT IS FURTHER ORDERED AND ADJUDGED** that the Commission's claims for disgorgement, prejudgment interest, and a civil penalty against Founding Partners are dismissed.

VII.

**Retention Of Jurisdiction**

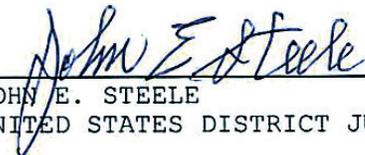
**IT IS FURTHER ORDERED AND ADJUDGED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

VIII.

**Rule 54(b)**

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

**DONE and ORDERED** at Fort Myers, Florida, this 4th day of August, 2014.

  
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JOHN E. STEELE  
UNITED STATES DISTRICT JUDGE

Copies:  
Counsel of Record  
Receiver