

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. 508], 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 trish.anzalone@nelsonmullins.com; or by telephone, by calling Trish Anzalone, 305-373-9469. 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. 508-1]

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 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 a date and time to be set under separate Notice within thirty (30) days after the expiration of the deadline to file objections. 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 December 31, 2020. Any

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 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 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>).