

UNITED STATES DISTRICT COURT  
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, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**RECEIVER'S MOTION FOR  
COURT APPROVAL TO RECOGNIZE TRANSFER OF CLAIM**

Daniel S. Newman, as Court-appointed Receiver ("Receiver") for Founding Partners Capital Management Co. ("FPCM"), Founding Partners Stable-Value Fund, LP ("Stable Value"), Founding Partners Stable-Value Fund II, LP ("Stable Value II"), Founding Partners Global Fund, Ltd. ("Global Fund") and Founding Partners Hybrid-Value Fund, LP ("Hybrid Value") (collectively, the "Receivership Entities") respectfully submits this Motion for Court Approval to Recognize Transfer of Claim (the "Motion").

1. The Receiver was appointed by Court Order on May 20, 2009 (the "Receivership Order"). [D.E. 73].

2. On July 3, 2014, the Court entered its Order approving the Receiver's Recommendations and Fairness of Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws (the "Claims Order"). [D.E. 430].

3. In its Claims Order, the Court approved certain claims made by investors in the claims process, as reflected on Revised Schedule A at D.E. 417-5. [*See* D.E. 430 at 31].

4. Claimant No. 8 (the "Claimant"), is the holder of an approved claim totaling \$28,000,000 (the "Approved Claim"). [D.E. 417-5 at 2].

5. The Receiver was contacted by representatives of the Claimant, who requested that Claimant's Approved Claim be transferred to the Kenny Allan Troutt Separate Trust Estate, a part of the Troutt Family Trust (the "Transferee"), subject to the approval of the Court.

6. Before applying to the Court for approval to recognize the transfer of Claimant's Approved Claim to the Transferee, the Receiver required the Transferee and Claimant to execute a sworn letter agreement (the "Agreement"). By executing the Agreement, the Transferee and Claimant acknowledged, agreed, and swore to:

- a. The amount of Claimant's claim, as approved by the Court in D.E. 430;
- b. Their representatives' authority to speak on behalf of, and transact business on behalf of, the Claimant and Transferee;
- c. Except as otherwise disclosed in writing to the Receiver,<sup>1</sup> the lack of any other assignment or interest in Claimant's Approved Claim;

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<sup>1</sup> Receiver notified Claimant he does not recognize the splitting of any claim, and that the Receiver would continue, and has continued, treating Claimant as the sole holder of the Claim. As such, Claimant presently remains the sole holder of the Claim on the Receiver's books and records.

- d. The fact that neither the Receiver nor his professionals had advised them or instructed them in any way;
- e. The fact that they are relying solely on their own independent counsel or advisors in connection with the requested transfer;
- f. The fact that they have not been influenced by the Receiver;
- g. Their release of the Receiver and his professionals from any liability for any adverse consequences, legal or otherwise, with respect to the requested transfer; and
- h. Their indemnification and holding harmless of the Receiver, the Receivership Entities, and all of their representatives, successors, and assigns, for any effect of the Agreement or the requested transfer.

7. The Receiver sent a copy of this Motion to the Transferee and Claimant prior to filing. The Transferee and Claimant approved the contents of this Motion, in addition to executing the Agreement.

8. Based on the representations made by the Transferee and Claimant, and the Agreement they executed, the Receiver files this Motion.

9. The Receiver will make the Agreement and any other documents available to the Court, should the Court desire to review such documents.

10. The Receiver notes that the Court permitted other similar transfers in this matter.  
[D.E. 395 at 11; D.E. 430 at 17; D.E. 477.]

**CONCLUSION**

Based on the foregoing, the Receiver respectfully requests that the Court authorize the Receiver to recognize the transfer of Claimant's Approved Claim to the Transferee in full, and authorize the Receiver to take steps to reflect that transfer in the Receivership's books and records.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2018, 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 electronically Notices of Electronic Filing.

Dated: November 27, 2018.

Respectfully submitted,  
**BROAD AND CASSEL LLP**

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**SERVICE LIST**

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT  
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

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**ORDER GRANTING RECEIVER'S MOTION  
FOR COURT APPROVAL TO RECOGNIZE TRANSFER OF CLAIM**

This matter comes before the Court on the Receiver's Motion for Court Approval to Recognize Transfer of Claim (Doc. #\_\_\_\_) (the "Motion") filed on November 27, 2018. Having considered the Motion, and being otherwise fully advised, it is

**ORDERED and ADJUDGED:**

1. The Receiver's Motion (Doc. \_\_\_\_ ) is GRANTED;
2. The Court hereby authorizes the Receiver to recognize the transfer of Claimant's Approved Claim to the Transferee, and authorizes the Receiver to take steps to reflect that transfer in the Receivership's books and records.

**DONE AND ORDERED** at Fort Myers, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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JOHN E. STEELE  
United States District Judge

Copies: Counsel of record